H.R. 348, H.R. 843, H.R. 1735, H.R. 2206, H.R. 2612, H.R. 3936, H.R. 4065, H.R. 4172, H.R. 4173, AND A DRAFT BILL

HEARING

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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April 29, 2004

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THURSDAY, APRIL 29, 2004

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 334, Cannon House Office Building, Hon. Henry E. Brown, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Brown, Brown-Waite, Michaud, Reyes, and Davis.

Ex officio present: Representative Evans.

OPENING STATEMENT OF CHAIRMAN BROWN

Mr. BROWN. Good morning. The subcommittee will come to order. I wish everyone a good morning. We don't usually have such a lengthy agenda, but we are operating on a tight legislative schedule this year, and I appreciate everyone's participation and cooperation.

If you notice this morning, they said we won't have any votes today, and when that happens, generally a lot of folks go home. We are some short this morning. We certainly appreciate the members who are here.

Because we have such a full plate, I will briefly explain each bill before us this morning before turning to my good friend, Mr. Michaud.

H.R. 348, the Prisoners of War Benefits Act of 2003, was introduced by this committee's vice chairman, Representative Bilirakis. The bill would add five new diseases to the list of those presumed to be service-connected for former prisoners of war, as well as eliminate the 30 day internment requirement for all diseases and establish standards for future presumptions.

H.R. 843, the Injured Veterans Benefits Eligibility Act of 2003, was introduced by Representative Reyes, Ranking Member Evans, Representative Brown of Florida, Representative Filner, and Representative Abercrombie. The bill would extend full VA benefits to veterans who are injured or die due to neglect at a VA hospital or during VA sponsored rehabilitation.

H.R. 1735 was introduced by Representative Davis of California. The bill would increase from $60,000 to $81,000 the maximum amount that VA can guarantee on a home loan.

H.R. 2206, the Prisoner of War/Missing in Action National Memorial Act, was introduced by Representative Calvert and other members of the California delegation. The bill would designate a POW/MIA Memorial at Riverside National Cemetery in California. I am pleased Mr. Calvert will be appearing before the subcommittee this morning.

H.R. 2612, the Veterans Adapted Housing Expansion Act of 2003, was introduced by Ranking Member Michaud and Ranking Member Evans. The bill would extend eligibility for specially adapted housing grants to veterans with permanent and total service-connected disabilities due to the loss or loss of use of both arms above the elbow.

H.R. 3936 was introduced by Chairman Smith and Ranking Member Evans, as well as Representative Skelton. The bill would authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, DC metropolitan area. We are pleased to have the Chief Judge of the Court with us this morning.

H.R. 4065, the Veterans Housing Affordability Act of 2004, was introduced by Representative Brown-Waite. The bill would index the maximum VA home loan amount to 90 percent of the Freddie Mac conforming loan rate. The VA loan rate would be $300,330 in 2004 and would continue to be adjusted annually.

H.R. 4172 was introduced by Ranking Member Evans and Ranking Member Michaud. The bill would codify VA regulations which adds five cancers to the list of those presumed to be associated with exposure to ionizing radiation, as well as permit certain veterans to receive VA benefits concurrently with those they receive under the Radiation Exposure Compensation Act.

H.R. 4173 was introduced by Ranking Member Michaud, Chairman Smith, Ranking Member Evans and myself, and would direct the VA Secretary to contract for a report on employment placement, retention, and advancement of recently separated servicemembers.

The final piece of legislation on the agenda is a draft bill to create an open period for certain active duty servicemembers to participate in the Montgomery GI Bill.

I now turn to the ranking member for his opening statement, Representative Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman. I really appreciate your scheduling all these bills today, and we do have a very ambitious schedule today. With that, I would request unanimous consent to submit my opening remarks for the record, and I also want to thank and give everyone a warm welcome. Thank you very much for taking time out of your busy schedule to come here this morning to give testimony to the committee.

Thank you, Mr. Chairman.

[The prepared statement of Congressman Michaud appears on p. 35.]

Mr. BROWN. We are also pleased to have in attendance the ranking member of the full committee, Mr. Evans. I understand you would like to make a statement.

OPENING STATEMENT OF HON. LANE EVANS, RANKING DEMOCRATIC MEMBER, COMMITTEE ON VETERANS' AFFAIRS

Mr. EVANS. Yes. I would like to thank you and the ranking member for the work you have done on these and several other bills. I want to thank the witnesses, as well.

Today, the subcommittee will consider H.R. 4172, a bill that I've introduced with Mr. Michaud. This legislation is another small step in recognizing the sacrifices and service of our military personnel who are exposed to ionizing radiation during their term in the military.

For many years, civilian weapons workers and military personnel alike suffered in silence because their government did not respond to their claims for compensation for injuries and diseases they contracted from their Service experiences.

I look forward to working with my colleagues to improve the treatment of our veterans and others.

I would like to submit my statement for the record, Mr. Chairman. I thank you again for your time and service on the subcommittee.

[The prepared statement of Congressman Evans appears on p. 38.]

Mr. BROWN. Thank you very much, Mr. Evans.

Ms. Davis, do you have an opening statement, or would you just like to submit it for the record?

OPENING STATEMENT OF HON. SUSAN A. DAVIS

Mrs. DAVIS. Thank you, Mr. Chairman. I just wanted to thank you all for your hearing, you and ranking member Michaud. I also want to thank all the distinguished veterans who are here today to hear about some of the pieces of legislation that we have before us today, because I know how significant and how important they are.

We are going to be looking at a number of concerns and benefits for those who were held as prisoners of war, and new assistance to veterans with specific types of disabilities.

The other issue that is close to my heart is VA's home loan program and its limitations. I will be very pleased to join with my colleagues to introduce a piece of legislation in that arena.

Thank you, Mr. Chairman.

Mr. BROWN. Thank you, Ms. Davis.

Our first witness this morning is the distinguished Chief Judge of the U.S. Court of Appeals for Veterans Claims, Judge Kramer. Judge Kramer, we are certainly glad to have you with us this morning.

If you would, before you begin your opening statement, please introduce the other members that you brought with you.

Judge KRAMER. To my left is the court's founding chief judge, Frank Nebeker, long known in the judicial community and in Washington, DC, and to my right is one of the court's newest members, Judge Kasold. I hope you will forgive his former staff work in the other body, but we are straightening him out now, and he's a member of the court's legislative committee.

STATEMENT OF THE HONORABLE KENNETH B. KRAMER, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS, ACCOMPANIED BY THE HONORABLE FRANK NEBEKER AND THE HONORABLE BRUCE KASOLD, JUDGES, UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Judge KRAMER. I am here to speak on behalf of 3936. I want to thank the Chairman of the full committee and the Ranking Minority Member of the full committee, Congressman Smith and Congressman Evans, for introducing this bill, as well as Congressman Skelton, who is the Ranking Minority Member of the Armed Services Committee.

I also want to extend my appreciation to committee staff who worked very hard on this bill, Pat Ryan, Kingston Smith, and Mary Ellen McCarthy. Without their help, we wouldn't be having this hearing today.

In sum, the Court wants, needs, and believes it should have its own courthouse. Not for its own purposes, but to symbolize the importance of veterans' law and judicial review for our nation's veterans.

Since the Court's founding, some 16 years ago, we have been housed in several commercial office buildings in Washington, DC. There is nothing certainly wrong with the quarters we are presently in, except that they do not send the right message to our nation's veterans, who at least in terms of what the Court is all about, are concerned that they are getting full, independent, and fair evaluation of the cases that they bring to the Court.

There has been tremendous confusion over the years as to the Court's role, whether indeed we are a part of the Department of Veterans Affairs, or we are indeed an independent, free-standing Federal court.

Every Federal court that we have studied is housed in its own dedicated courthouse, except the Veterans Court, and we believe that the veterans of our country really deserve better.

I gave you a fairly lengthy prepared statement. I won't take your time up and read it, but let me just hit a few of the highlights, if I might, in preparation for any questions you might have.

For almost four years now, we have been on the search for a successor facility. We have looked at a variety of places, locations, most of them in the District of Columbia. For a variety of reasons, we concluded that those simply would not work out.

It is about this time, maybe about a year and a half to two years ago, that it was called to our attention that there are three parking lots on the Pentagon Reservation. For those of you who are familiar with Pentagon City, this is Army-Navy Drive here, and what a lot of people call Macy's parking lot, which is really used primarily by the Pentagon, there is a parcel here, and then two succeeding parcels, each a little bit smaller in size, as you move down the drive towards the District of Columbia.

We learned that the Pentagon was considering developing these properties. In fact, as we sit here, there is an ongoing study commissioned by the Pentagon to determine the highest and best possible use for these parking lots, with a view towards using enhanced leasing authority to enter into agreement with a private de-

veloper who would develop these properties, and then in turn lease them to suitable tenants, and of course, I imagine, although not told specifically, the purposes that would be of gain to the Pentagon from doing this would be the construction of underground parking by a private developer and perhaps some revenue stream.

This study was supposed to be completed at the end of February. It has not been finished yet. There are two issues that are really preventing it from having been concluded in February.

Those reasons are that there is a commercialization clause somewhere in the property documents that might restrict the Pentagon's use of this property. That is one thing that is being studied. Secondly, enhanced leasing authority is only available to the services and not to the Department of Defense, so they are trying to work out the issues with that.

I see you have the same type of timing device we have in our court. I can stop and take questions or just try to finish, if you would prefer me to do that.

[The prepared statement of Judge Kramer, with attachment, appears on p. 52.]

Mr. BROWN. We appreciate very much your coming and bringing this petition to us. I certainly support H.R. 3936. I don't have a question. Mr. Michaud, do you have a question? Thank you very much for coming, and we certainly will proceed on this bill during the markup session. We will hope we can get approval on this major project.

Mr. MICHAUD. No, thank you.

Thank you very much. We feel the veterans deserve it, too. Thank you, sir.

Judge KRAMER. Thank you.

Mr. BROWN. Will the second panel please come forward? We are pleased to welcome for the first time to our subcommittee Representative Ken Calvert, who will share his views on H.R. 2206. Vice Chairman Bilirakis had a change in his schedule, so he will be submitting a statement for the record.

[The statement of the Honorable Michael Bilirakis appears on p. 40.]

STATEMENTS OF THE HONORABLE KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; THE HONORABLE MICHAEL H. MICHAUD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE; THE HONORABLE GINNY BROWN-WAITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA; THE HONORABLE SUSAN A. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND THE HONORABLE SILVESTRE REYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

STATEMENT OF THE HONORABLE KEN CALVERT

Mr. CALVERT. Thank you, Mr. Chairman and the subcommittee, for giving me the opportunity to speak in support of my legislation, H.R. 2206, the Prisoner of War/Missing in Action National Memorial Act of 2003. Introduced on May 27, 2003, H.R. 2206 would designate the Prisoner of War/Missing in Action Memorial presently

being built at the Riverside National Cemetery, Riverside, California, as the national POW/MIA memorial.

Currently, no national memorial exists to honor both prisoners of war and those missing in action, nor is there a designated POW/MIA statute.

Andersonville National Historic Site in Andersonville, Georgia, in fact is the only park in the National Park system to serve as a memorial specifically for American prisoners of war throughout the nation's history, but it does not include recognition of those missing in action.

Congress stated in the authorizing legislation that this park's purpose is to provide an understanding of the overall prisoner of war story of the Civil War to interpret the role of prisoner of war camps in history, to commemorate the sacrifice of Americans who lost their lives in such camps, and to preserve the monuments located within the site. In 1998, a museum was dedicated at Andersonville for men and women of this country who have suffered captivity.

The POW/MIA Memorial at Riverside National Cemetery would stand to fulfill the existing need of our nation for monuments and memorials that pays respect to all Armed Services veterans by one, recognizing and honoring all veterans who in service to this nation sacrificed their physical and mental well being as prisoners of war, and recognize the plight of more than 89,000 veterans who did not return home, missing in action.

Two, creating accessibility to the millions of Americans living west of the Mississippi to visit a national memorial and monument in honor of men and women of the Armed Services, specifically for POWs and MIAs. Presently, most national memorials and monuments lie east of the Mississippi.

And three, continuing the Riverside National Cemetery's effort to memorialize our nation's veterans at the national cemeteries throughout the country, and through the incorporation of the memorial park concept.

Moreover, the Riverside National Cemetery provides the ideal location for this national memorial, given its status as the second-largest resting place in our national cemetery system, with 125,000 men and women of our armed forces standing silent vigil.

In fact, in less than five years, it is expected to be the largest cemetery in the national system. In six decades, it will have more than 1.4 million honored veterans, making Riverside National Cemetery larger than Arlington National Cemetery, the most widely recognized. What better place to have a national memorial, a national shrine, in honor of American POWs and MIAs?

The POW/MIA Memorial would depict a one and one-half scale life sculpture of a prisoner of war on his knees with his arms pinned behind his back by a bamboo/wooden rod and his head defiantly lifted towards heaven. He has not lost hope. He is not defeated. The statue is surrounded by columns of black granite and rests a few yards from the black and white flag, the national symbol of the POW/MIA cause. It was sculpted by the renowned California artist, Lewis Lee Millet, Jr., son of the Congressional Medal of Honor recipient, Colonel Lewis Millet, Sr., U.S Army Retired.

The design has received approval from the National Cemetery Administration, Department of Veterans Affairs.

Finally, at Riverside National Cemetery, the POW/MIA National Memorial would proudly join the National Medal of Honor Memorial at the Riverside National Cemetery, and like the Congressional Medal of Honor Memorial, will be paid for and maintained by private dollars.

For this reason, the Congressional Budget Office has given H.R. 2206 a score of zero; zero cost to the American taxpayers, making both memorials true representations of the people and by the people of the United States of America.

Clearly, this project's funding shows that it has been given the stamp of approval by the American public, including our American veterans and their families. Additionally, H.R. 2206 legislation has received wide support from veterans' organizations, including the Veterans of Foreign Wars.

Thank you again, Mr. Chairman, and to the whole Subcommittee on Veterans' Benefits, for letting me speak on behalf of this legislation, H.R. 2006, the Prisoner of War/Missing in Action National Memorial Act of 2003.

I look forward to working with you all and seeing that H.R. 2206 becomes law, giving our American prisoners of war and those missing in action the long overdue national memorial they deserve.

Thank you.

[The prepared statement of Mr. Calvert, with attachments, appears on p. 55.]

Mr. BROWN. Thank you for your leadership in Congress and for your support of this major endeavor here. I know that you have spent a lot of time not only with the idea but also raising the funds, and it is a tribute to those who have given so much for our country. I really appreciate you and your leadership and your friendship. Thank you for being here today.

I don't have any questions. Mr. Michaud, do you have a question?

Mr. MICHAUD. No. I, too, want to thank you very much for taking your time. I do like the cost is zero. Thank you.

Mr. CALVERT. Thank you.

Mr. BROWN. Thanks for coming. Thank you.

Mr. Michaud is here in support of H.R. 2612; Ms. Brown-Waite is here on her bill, H.R. 4065; Mr. Reyes is here for his bill, H.R. 843; and Ms. Davis is here on her bill, H.R. 1735.

I now recognize Mr. Michaud.

STATEMENT OF THE HONORABLE MICHAEL H. MICHAUD

Mr. MICHAUD. Thank you very much, Mr. Chairman, for agreeing to consider H.R. 2612, the Veterans Adapted Housing Expansion Act of 2003.

It is a great pleasure for me to speak on this bill, which was introduced in response to the request of a severely disabled veteran, Mr. James Moore of Nebraska. Mr. Moore brought this to my attention, that a small number of veterans, Mr. Moore included, have lost not only both their hands, but both their arms, including loss of function, and above both elbow joints.

These veterans suffer an even more severe disability than those who retain function of the elbow joint. They suffer from balance

problems and are less effectively able to use prosthetic devices. As a result, they require more extensive adaptions to their homes than those needed because they lost both hands.

While this bill will provide much needed assistance, the consideration of this bill also tells all American veterans that they can bring their concerns to the attention of this committee and that we will act on those concerns.

I hope that as veterans risk the loss of life and limb in service to our country, that this subcommittee will mark up H.R. 2612. Passage of this legislation will enable veterans who have lost their arms to obtain a suitably adapted home when they return.

Thank you very much, Mr. Chairman.

Mr. BROWN. Thank you very much, Mr. Michaud.

I recognize Ms. Brown-Waite for her bill, H.R. 4065.

STATEMENT OF THE HONORABLE GINNY BROWN-WAITE

Ms. BROWN-WAITE. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the committee, I am very pleased to be able to discuss this legislation, because I think it will provide a great benefit to all veterans.

The Veterans Housing Affordability Act, H.R. 4065, is a good government solution which will assist veterans across the nation at a very minimal cost to the taxpayers.

As members of the committee know, home ownership is one of the main building blocks of a strong community, and also of a strong economy.

A home is the largest financial investment most American families will ever make, and allows them to build financial security as the equity in their home increases. Moreover, this tangible asset provides a family with borrowing power to finance important needs, such as the education of their children.

VA has been providing home loan guarantees to men and women who served our country since 1944. Under this program, the veteran purchases a home through a private lender and the VA guarantees to pay the lender a portion, usually 25 percent, of the loss if the veteran defaults on the loan. Because of this benefit, millions of veterans have been able to realize the great American dream of home ownership.

Since its inception in 1944, the VA has guaranteed $748 billion in loans for 16.9 million veterans. In 2002, the VA guaranteed more than $40.1 billion in loans to finance the purchase or refinance 317,250 homes. This program has been a tremendous asset to veterans.

However, the first decade of the 21st Century has been one of the most expansive growth in home values. For homeowners, this has been a tremendous boom because our values went up and our property values went up substantially. In some regions, however, home values have almost doubled in the last five years. Those not fortunate enough to already be a homeowner are facing daunting prices for entry level homes.

In New Jersey, for example, the median housing prices hover in the $300,000 to $400,000 range, and in Connecticut, California, Washington, Virginia, Maryland, Illinois and Florida, as well as

many other states, and certainly in the DC area, we know how much housing is here.

Many soldiers postpone home ownership until they are out of the service. In very real terms, as median housing prices rise, the VA home loan benefit decreases. There is no current mechanism in place for the maximum loan amount to adjust to reflect prevailing market conditions. That is exactly what my bill does.

The rising housing market erodes the purchasing power of the VA home loan. Depending on where the veteran lives, $240,000 is simply insufficient to meet their housing needs when they do decide to purchase. This is simply wrong. At the very least, we owe our veterans the same chance at the American dream after their service as they had the day they enlisted.

H.R. 4065 preserves the VA home loan guarantee benefit because it indexes a maximum VA guarantee amount to 25 percent of 90 percent of the Freddie Mac loan rate. If my bill were to pass, the prevailing VA loan limit would be $300,330 in 2004 and it would continue to adjust to the market and to the housing needs of veterans. It would be an automatic adjustment.

We are all very proud of the young men and women who serve our nation, past and present. I hope that you will agree that the value of their benefit should not vary depending on where they live or where they decide to purchase a home.

This legislation is important and timely, and I hope that the committee will support this bill, because it does have the added benefit of the fact that we won't ever have to do this again because it is self-adjusting.

Mr. Chairman and members, I will be very happy to answer any questions if you have any. I know that the bill is very similar to Ms. Davis' bill, and the major difference is my bill is self-adjusting.

While Congress has many things to do, this will not be an issue that we will have to take up again.

Thank you.

Mr. BROWN. Thank you, Ms. Brown-Waite. We will hold questions until all have had a chance to address their bills.

At this time, we will hear from Ms. Davis on H.R. 1735.

STATEMENT OF THE HONORABLE SUSAN A. DAVIS

Mrs. DAVIS. Thank you, Mr. Chairman. I want to thank you for bringing this issue to the forefront and also thank my colleague, Ms. Brown-Waite, for her legislation, as well.

As we know, this is a crucial issue to any veteran seeking to purchase a home, and I'm committed to giving America's retired military personnel new opportunities for home ownership.

The lowering of interest rates in recent years has pushed up housing costs to record highs. In Southern California, for example, the average price has reached $375,000. In San Diego, housing costs are even higher, averaging well over $400,000. As you can imagine, I have heard from plenty of my veterans on the VA's home loan program and its limitations.

Simply put, veterans living in high cost areas cannot use the VA home loan because of the current limit of $240,000. Instead of taking advantage of the benefits that come with the VA home loan, our retired military personnel must rely on traditional lenders.

I have always been deeply concerned that many veterans won't ever have the opportunity to buy a home without a subsidized VA loan.

When a dramatic shift occurs in the housing market, I feel we have a responsibility to respond and to make the VA home loan compatible with current conditions. We have failed to make the necessary adjustments in recent years and America's veterans are paying the price.

Because of my determination to give the veterans in San Diego and veterans across the United States the opportunity to own a home, I introduced legislation to increase the VA home loan limit when I was first elected to Congress, over three years ago. I was quick to re-introduce the same legislation in the 108th Congress, and I am honored to have bipartisan support today for this legislation.

My bill, H.R. 1735, increases the current limit from $240,000 to $324,000, an amount comparable to the limit set by Freddie Mac and made to the general public.

It is my goal to improve the VA's home loan program this session. I also support efforts to index the VA home loan program to the Freddie Mac criteria in Congresswoman Brown-Waite's bill, H.R. 4065, also before the subcommittee today, and I want to thank her once again for raising the issue.

We should seriously consider addressing the maximum amount to guarantee that the VA limit increases consistently with the Freddie Mac level.

However, I do feel it is important that we set the index to match the Freddie Mac amounts so that our veterans are on an equal footing with the general public in today's difficult real estate market. When I introduced H.R. 1735 one year ago, it would have set the VA limit slightly above the Freddie Mac amount.

Again, Mr. Chairman, I am committed to giving our active duty and our retired military personnel new opportunities for home ownership and to improving the VA home loan.

Thank you for recognizing the need and for bringing this crucial issue to the forefront. I hope the subcommittee will mark up this legislation increasing the home loan limit, and thank you once again for consideration of the bill.

Mr. BROWN. Thank you, Ms. Davis.

I now recognize Mr. Reyes. I know you have been attending another meeting, and we are glad that you would come and take the time to work on this particular legislation.

STATEMENT OF THE HONORABLE SILVESTRE REYES

Mr. REYES. Thank you, Mr. Chairman, and Ranking Member. I appreciate your indulgence. As you know, this term, I sit on the Intelligence and Armed Services. It seems like every time we schedule a hearing here, there is a competing hearing there. In fact, we are hearing very important testimony on the situation in Afghanistan right now. I appreciate the opportunity and the leeway you have given us to do both.

I wanted to thank you, Mr. Chairman and Ranking Member for allowing the subcommittee to hear H.R. 843. I introduced this legislation during the 107th Congress as Ranking Member of the Ben-

efits Subcommittee. Because of budget restraints and other priorities, the legislation did not receive any consideration.

With the leadership of the current Ranking Member, Mr. Michaud of Maine, and his subcommittee staff, this issue remained on the forefront of the subcommittee's agenda. Amid the current budget situation, this bill may have easily have been overlooked, and I thank you, Mr. Chairman and my good friend, the Ranking Member, for recognizing the importance and significance of its consideration to our veteran community.

Mr. Chairman, H.R. 843, the Injured Veterans Benefits Eligibility Act of 2004 is an important piece of legislation. This bill is intended to provide additional service-connected disability benefits for persons disabled by medical treatment or vocational rehabilitation provided by the Department of Veterans Affairs. This bill would also cover survivors of persons dying from such disabilities.

When veterans are disabled by medical treatment or vocational rehabilitation activities, they and their families suffer the same kind of economic loss as veterans who are disabled by similar medical conditions during military service. But for their military service, these veterans would not be disabled. It is only right that they and their families receive the same benefits as veterans disabled during military service.

Under current law, these veterans and their survivors are eligible for VA service-connected cash compensation and survivors dependency and indemnity compensation benefits, but not other ancillary benefits provided to service-connected veterans.

These ancillary benefits include health care for dependents under the CHAMPVA program, and a $10,000 policy of life insurance provided under the service-disabled veterans insurance program, and education benefits for their children.

The Congressional Budget Office has estimated that about 1,800 veterans and about 1,200 spouses, which also include surviving spouses, would qualify for these additional benefits.

I don't think we should ask veterans and their families to bear the financial burden of negligence on the part of VA or perhaps even carelessness.

That is why, Mr. Chairman, I strongly urge you and the Ranking Member and all my fellow colleagues of the subcommittee to favorably consider this legislation. Thank you, again, for allowing me to testify.

[The statement of Hon. Silvestre Reyes appears on p. 44.]

Mr. BROWN. Thank you for coming over. I know about juggling all those committee meetings. Thank you very much for your support of this legislation and also for your dedication to helping our veterans, who certainly give us the freedom we enjoy, by being here this morning.

I thank the other members for bringing attention to these issues through these other bills.

Mr. Michaud, do you have a question for any member of the panel?

Mr. MICHAUD. No, Mr. Chairman.

Mr. BROWN. Do any members have any questions on any of the issues? If not, we will go to the next panel. Thank you.

Good morning, gentlemen. Mr. Robert Epley is the Associate Deputy Under Secretary for Policy and Program Management at the Veterans Benefits Administration. He is accompanied by Mr. Jack Thompson, the VA Deputy General Counsel. Testifying on behalf of the Department of Defense is Mr. William Carr, the Acting Deputy Under Secretary of Defense for Military Personnel Policy.

Welcome, gentlemen. Mr. Epley, you may begin. Thanks.

STATEMENTS OF ROBERT J. EPLEY, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, ACCOMPANIED BY JOHN H. THOMPSON, DEPUTY GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS; AND WILLIAM CARR, ACTING DEPUTY UNDER SECRETARY OF DEFENSE FOR MILITARY PERSONNEL POLICY, DEPARTMENT OF DEFENSE

STATEMENT OF ROBERT J. EPLEY

Mr. EPLEY. Mr. Chairman and members of the subcommittee, thank you for inviting us here today to testify. We welcome the opportunity to present the views of the Department of Veterans Affairs on the various bills of great interest to our nation's veterans.

As you mentioned, I am accompanied by Mr. Jack Thompson, our Deputy General Counsel.

You requested our views on two bills that would increase the maximum loan guaranty. We have already heard the nature of those two bills, H.R. 1735 and H.R. 4065, both would increase the maximum guaranty level. Both would result in savings. The distinction in H.R. 4065 is it would include a provision to adjust the maximum guaranty to the Freddie Mac loan rate.

VA is currently reviewing the results of an independent program evaluation of our home loan program. The maximum home loan guaranty was an element of this evaluation. We support the concept of an increase, but we must reserve our opinion on these two bills until we can complete our analysis of that report.

H.R. 2612 also relates to our loan program. This bill will authorize the Secretary to provide specially adapted housing grants of up to $50,000 to certain veterans with permanent and total service-connected disabilities due to the loss or loss of use of both upper extremities. Currently, these veterans are eligible for a lesser grant of up to $10,000.

VA supports the proposed increase for this class of severely injured veterans.

H.R. 348, the Prisoner of War Benefits Act of 2003, would add five conditions to the list of diseases for which a presumption of service connection is available to former POWs.

It would also set up a new protocol under which the Secretary would consider association of additional diseases with the POW experience.

Clearly, the stresses and privations endured by POWs take heavy tolls on their health in ways that may never be fully understood, and these veterans are particularly deserving of special consideration.

VA strongly supports enactment of Section 2(c) of H.R. 348, provided that Congress can find offsetting savings.

VA is also working administratively to address the needs of former POWs for full and fair compensation. The Secretary has tasked a work group to develop a methodology for the fair and balanced assessment of medical conditions associated with detention as a POW, and recommend to him any conditions that warrant designation as presumptively service-connected.

This work group has met several times, and will be shortly recommending to the Secretary a proposed methodology for consideration of additional diseases.

We pledge to work through these difficult issues as quickly as possible, and to keep this committee informed of our progress.

H.R. 2206 also relates to former POWs. This is the bill which designates the memorial to be constructed at the Riverside National Cemetery as a prisoner of war/missing in action national memorial.

We have no objection to designating this memorial as provided in the bill. However, we do note that the National Park Service maintains the museum in Andersonville, Georgia, with similar designation, and we recommend that the National Park Service have an opportunity to comment on the legislation.

Also, we note that this bill would restrict the use of Federal funds to maintain the Riverside memorial. Without authority to use Federal funds for the care and maintenance of the memorial, we do not support the legislation.

H.R. 4173 would require VA to enter into a contract to study employment placement, retention, and advancement of recently separated servicemembers. VA supports the goals of H.R. 4173. We believe it may be advantageous to broaden the scope of that study, and that there may be an ongoing need for such analyses which may require additional funding in the future.

VA also believes it would be more appropriate to fund this study out of the readjustment benefits account.

H.R. 4172 would codify two areas of existing regulation relating to radiation exposed veterans. It would also provide that a radiation exposed veteran who receives a payment under the Radiation Exposure Compensation Act, RECA, would be entitled to receive VA compensation after offset of the amounts received under RECA. That would also apply to EEOIC applicants.

VA favors enactment of this provision provided that Congress can find an offset.

H.R. 3936 addresses the location of the Court of Appeals for Veterans' Claims, and VA defers to the Court on that bill.

H.R. 843 would create eligibility for Section 1151 beneficiaries under various Title XXXVIII benefit programs. Each of these benefits might correspond to an element of the damages which could constitute a tort award against the Government under the Federal Tort Claims Act. Therefore, the bill might create an anomalous dual remedy for veterans with non-service-connected disabilities that is more advantageous than the remedy provided for veterans injured during their military service.

VA does not support this bill.

Mr. Chairman, you also requested our views on a draft bill entitled Veterans' Education Opportunity Act of 2004. This bill would authorize certain individuals to convert their eligibility from the Chapter 32 post-Vietnam era education program to the Montgomery GI Bill.

There have been two previous opportunities for similar conversions to the Montgomery GI Bill, and enactment of this bill would result in significantly increased costs. Therefore, we are unable to support this bill's enactment.

Mr. Chairman, that summarizes my testimony.

[The prepared statement of Mr. Epley appears on p. 65.]

Mr. BROWN. Thank you, Mr. Epley. Let me go to Mr. Carr, and then we will come back to questions for the panel. Thank you.

STATEMENT OF WILLIAM J. CARR

Mr. CARR. Mr. Chairman, thank you. The Department recognizes the contributions and the influence of the decisions and actions of this subcommittee and our colleagues at the Department of Veterans Affairs on the success of the defense enterprise.

With regard to recruiting and retention, which are a by-product of those actions and decisions, they are both going well in the area which I oversee, which is the active military personnel policies.

Recruiting is good. Retention is good. As having spent my adult life overseeing military personnel policy and being involved in it, I frankly didn't expect it would be at this stage of success at this moment.

We have watched the leading indicators in terms of survey results and asking a substantial number of soldiers and families what their retention intentions are. We ask young people and their parents how they feel about recruiting and having their child serve in the military. All of those are generally good indicators, and those are influenced in part by the education programs, for the specific matter for which defense representatives here today, the VEAP.

We actually have opened that, as the subcommittee knows, a couple of times in the past. In 1996, about half of those who would have qualified under that legislation took advantage of the opportunity, and in 2000, about 20 percent took advantage of the opportunity. A substantial number already have made that conversion.

For the active duty Montgomery GI Bill, it has a few different purposes. One is for recruiting, to incentivize that, but also for transition.

In the case of recruiting, that is going well, as I've mentioned, although we are watchful. In the case of transition, those who are in that eligible cohort are also in the retirement eligible cohorts, where transition is eased.

Therefore, the Department of Defense would agree with the priority and the position that is taken by the Department of Veterans Affairs on that particular initiative.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Carr appears on p. 81.]

Mr. BROWN. The recruits that are coming into the services now, are we having more recruits than we have positions open? Are you having to do a lot of selecting? How is the recruiting coming?

Mr. CARR. If we took the applicants that we are working with, the number that would be there, that we would convert to active duty, and many don't choose in the end to enlist, but that density is about the same as it has been in years past. The density is not only sufficient to cover our needs both quantitatively and qualitatively, we are not relaxing any standards and we are still hitting the numbers, the numbers are where they should be. We are not lowering them just to make it easy.

Against those parameters, recruiting is successful, but something that is especially surprising is through the delayed entry program, where the Department builds a bull pen of recruits for later entry, those are at historically high levels.

As we look at whether or not in Armed Services there is some consideration of the Army adjustment to end strength, that could put an additional demand on recruiting. Major General Rochelle, the head of Army recruiting, has said that the Army Recruiting Command could cover that because their bull pen is so strong.

Again, nothing taken for granted because the positive comments don't suggest anything sanguine in every month. We are looking at the economic indicators. They are stronger. That is good news for the economy, bad news for recruiting. We have to be attentive to the direction those factors take as well, but the mix is solid on virtually any dimension that we want to cut it.

Mr. BROWN. Thank you very much. In reference to the POW/MIA monument, I noticed that you said in your statement that if the Department didn't have responsibility for the maintenance, then you wouldn't support it.

Is that different from the normal policy? Why would that be the case?

Mr. EPLEY. Our concern, Mr. Chairman, is it's a wonderful idea, and we do not object to the establishment of the monument. In fact, our National Cemetery Administration is ready to proceed with the activity out at Riverside.

We understand in the bill that private funding is intended to cover the maintenance. Our concern is we don't want to see a shortfall in the private funding and allow that memorial or the grounds around it to deteriorate. We just want to be able to use our administrative funds to assure the high standards.

Mr. BROWN. I don't know the procedure or how all this works, but I would assume there would be some allocation of funding, or we believe the responsibility would still be on Riverside to maintain some quality of conditions there.

That is why I was questioning about why the private funds couldn't be used, as long as the conditions were being set and met by Riverside. I think it was the intent to make this revenue neutral.

Mr. EPLEY. We would welcome that, Mr. Chairman. We want to maintain it to the highest standards that we can. It was our reading of the proposed legislation that it would be prohibited. If we misunderstood that, we would be happy to maintain it.

Mr. BROWN. Let me ask you one further question. Regarding the two home loan bills, H.R. 1735 and 4065. I am respectfully not sure that waiting for completion of an independent program evaluation on the maximum home loan is necessary.

The subcommittee already knows that housing prices have increased significantly since Congress last increased the VA maximum loan guarantees in December 2001, especially in metropolitan areas like Atlanta, Boston, Denver, Honolulu, Los Angeles, New York, San Diego and so forth.

I personally think that H.R. 1735 and H.R. 4065 represent steps in the right direction. If VA were to implement only one of them, which would you prefer and why?

Mr. EPLEY. Mr. Chairman, as I mentioned in my testimony, the VA requests deferring a position on that as an agency until we get that study.

If you were asking me for my personal opinion on that, the argument that we heard earlier about aligning the loan maximum to the market and having an automatic indexing is a compelling argument in H.R. 4065.

Mr. BROWN. Thank you. Mr. Michaud, do you have any questions?

Mr. MICHAUD. I have a couple of questions for the VA. It is my understanding that if an offset applies, the VA deducts the entire amount of a FTCA award, including attorney fees, from the benefit otherwise payable to a veteran receiving compensation under 38 USC, Section 1151, regardless of how the elements of the awards were calculated.

My second question is would you describe the circumstances under which VA does not offset the FTCA award against service-connected compensation benefits?

Mr. EPLEY. Mr. Michaud, your question gets into some detail. I will try to address it briefly, and then I will ask Mr. Thompson to give a little more detail on it.

Our understanding of the law and RECA is passage of the law might put non-service-connected veterans who are—I'm sorry. I meant 1151. It might place them in an advantageous position relative to those veterans who are service-connected as a result of their direct military service. That's the major concern that we have.

Regarding more detail on when we offset and when we don't, sir, I'd like to ask Mr. Thompson to address that.

Mr. THOMPSON. Mr. Michaud, the Department has a couple of concerns about this bill and the way the offset would work.

First of all, for the treatment-injured veterans, they have a remedy available to them that service-injured veterans do not, under the Federal Torts Claim Act, under which either through an administrative claim or later through a suit, there is a potential for a large up-front lump sum payment.

If in addition to this remedy, which service-injured veterans do not have, you were to confer eligibility for all ancillary service-connected benefits, you would in fact just be increasing the disparity between these two classes of veterans.

With regard to offset, the way the bill is written, there is no requirement that a veteran even apply for compensation under 1151, in order to qualify for ancillary service-connected benefits. If he doesn't apply for 1151 compensation, and the same purpose for the ancillary benefits has been met in the lump sum tort award the veteran gets, then in applying for and receiving the ancillary benefits, there would in fact be a double recovery.

There would be no offset at all unless there is VA compensation.

Mr. MICHAUD. It's my understanding they could not get the ancillary benefits—I think it treats them both equally under the bill. I will have to re-read that language. Mr. Chairman, if I could submit further written questions for clarification.

Recruiting and retention costs, it's my assumption they are increasing, just to keep up barely with meeting the DOD's goals. Is that correct?

Mr. CARR. It is. In the past ten years, the costs per recruit, when everything is thrown in, in constant dollars, has roughly doubled.

The investment still is an efficient, effective investment because when we consider the productivity, as defended by the National Academy of Sciences, it is a terrific buy relative to the alternative of conscription, and that is the reason the Department and the Congress believes the All Volunteer Force works as well as it does. It is a cost-effective force, notwithstanding those more substantial investments, and it is those investments that make sure that we do have the number and quality objectives, and there are few things, I think, among defense leadership, military or civilian, that get attention quicker than a blip in recruiting. This is a manifestation of that.

Mr. MICHAUD. Have you taken the time to look at recruiting guides, what effect that is having on a State like Maine, that has a higher percentage of National Guards overseas, what effect that is having on small businesses?

Mr. CARR. On the small businesses, I am sorry, I am just not qualified to comment, that is over in our Reserve Affairs. I would have to take that for the record.

[The information follows:]

U.S. House of Representatives, Subcommittee on Benefits
Committee on Veterans' Affairs
Hearing on: H.R. 348, H.R. 843, H.R. 1735, H.R. 2206, H.R. 2612, H.R. 3936, H.R. 4065, H.R. 4172, H.R. 4173, And a Draft Bill
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While there are currently no definitive statistical studies that address the effect of current mobilization/operations tempo on small businesses, both the Department of Defense and the Small Business Administration (SBA) have initiatives underway to answer this question. The SBA estimates that as many as 420,000 Guard and reserve members work for small (less than 500 employees) businesses. The Department recognizes that small business ownership comes with many challenges, especially for those employing National Guard and Reserve members who are balancing civilian careers with service to the nation. The Counseling and Loan Programs, Service members Civil Relief Act and Small Business Military Reservist Economic Injury Disaster Loans can offer some assistance, but more small business readiness planning is needed.

To gain further insight into issues of greatest concern to employers of Guard and Reserve members, the Office of the Assistant Secretary of Defense for Reserve Affairs is sponsoring a research and studies project that focuses on determining the type and extent of problems with employer support and what causes those problems. One particular aspect of this research project will be to determine the effect on small businesses and the self-employed.

As a first step in determining the impact of mobilization, the Department recently established a Guard and Reserve Employer Database, which will facilitate direct communications with employers who actually employ Guard and Reserve members. This direct contact with employers affected by mobilization and reserve service will significantly enhance the Department's ability to address issues that concern employers and enhance employer support.

Mr. MICHAUD. Thank you.

Mr. BROWN. Thank you, Mr. Michaud.

Mr. Carr, does the Department have a position on H.R. 3936 to build and construct the veterans' courthouse on the Pentagon Reservation?

Mr. CARR. Not that I'm aware of, Mr. Chairman. I can again answer that for the record. I didn't anticipate that.

[The information follows:]

US. House of Representatives, Subcommittee on Benefits
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The Department supports HR 3936 to build a dedicated courthouse and justice center. However, the Department does not support the Pentagon Reservation as an appropriate location as it is a high security location and construction of the courthouse near the Pentagon would be a security risk for both the Pentagon and the courthouse. In addition, the Pentagon Reservation is not an ideal location because of the limited parking, traffic congestion, and extensive construction that is currently underway.

Mr. BROWN. All right. Do any other members have a question? Ms. Davis?

Mrs. DAVIS. This is probably a question we would both want to ask. When do you expect to have the report out on the bills for the VA loans?

Mr. EPLEY. Ma'am, we have received preliminary briefings from them, almost all of the research is done and the report is being drafted. I expect that we should receive it within a month.

Mrs. DAVIS. That would be helpful. It was my understanding that perhaps as they have looked at the bills, there was actually more savings in 1735?

Mr. EPLEY. That's correct. I think both bills save money. I believe 1735 would result in about $82 million over ten years, and I believe 4065 is $71.3 million over ten years. They both result in savings.

Mrs. DAVIS. They both result in savings. Could you clarify just briefly whether or not the VA provides home loans for multi-family units or duplexes? How does it accommodate that kind of housing?

Mr. EPLEY. I do not know the answer to that. I have the director of the Loan Guaranty Program. Is my answer correct?

Mr. PEDIGO. We do have provisions for providing guaranty loans for multi-family housing up to four units per veteran.

Mrs. DAVIS. Thank you. Mr. Chairman, just a question or two. You mentioned the idea of indexing, and actually, I think that is also a good idea. Our interest was in trying to bring the index to at least match what the Freddie Mac opportunities are that people have that are not necessarily for veterans, and that was important to bump it up to a point that people actually could take advantage of the housing market in their areas.

If in fact we didn't index it necessarily to the 25 percent of the Freddie Mac standard, is there another index that you had thought about that might be comparable or a different national standard you would have in mind?

Mr. EPLEY. Actually, ma'am, we would use the same index if we were considering such a thing in the FHA programs that are similarly constructed. We think if we are looking to index, Freddie Mac is the right way to go.

Mrs. DAVIS. Great. Thank you. Obviously, there are savings if we increase it somewhat. Are you seeing that the VA home loan has been useful with the current limit to veterans, or in fact are they really not able to access that today?

Mr. EPLEY. The program is successful. One of the members, perhaps yourself, quoted numbers for the last couple of years. Last year in 2003, we had a record year. I think it was the third highest number of guarantees in the last 50 years. It is a very active and robust program.

As stated earlier in testimony, we are finding that the maximum, $240,000, is eroding, compared to some of our larger city markets. We don't want to see our veterans locked out of those markets, and I know that is the impetus for the bill.

Mrs. DAVIS. Thank you very much. We look forward to the report. Thank you.

Mr. BROWN. Thank you, Ms. Davis.

Ms. Brown-Waite?

Ms. BROWN-WAITE. Thank you very much, Mr. Chairman.

Along the lines of the questions that Ms. Davis was asking, we got initial figures from CBO which, what a surprise, are different than the figures that you cited, Mr. Epley, in your statement.

For example, the initial CBO figure for the first year of my bill would be $37 million, as opposed to, I think you all showed it as $20.5 million in 2005. Again, these are the estimated CBO figures. We don't have it formally in writing. A ten year amount for the bill as currently drafted would be about $280 million. They are substantially higher than the figures you showed, and I'm sure we will come together with a figure that everybody can hopefully agree upon.

In light of this substantial amount, what I most likely will do is have the bill amended to remove the 25 percent figure, or rather, holding it to the 90 percent of the Freddie Mac, so that it would be 100 percent of the Freddie Mac amount.

Is this going to throw a monkey wrench into your estimates, first of all, and would the elimination of the 90 percent and going to the 100 percent be supported?

Mr. EPLEY. I still have to defer to a statement in support on behalf of the agency. Please excuse me for that. We do want to see the results of the study. In relative terms, raising the index up to the full amount, the loan program as it is currently constructed, is doing very well financially, and indexing that would not have a detrimental effect relative to us.

It would raise the overall maximum and be more inclusive of veterans in more expensive markets. It would be hard to say that would throw a monkey wrench into it.

Ms. BROWN-WAITE. One other question, Mr. Chairman. Isn't the program going to be self-sustaining in 2005? That was the information that I had.

Mr. EPLEY. Currently, we have a negative subsidy rate. We are doing very well financially, and we have considered legislation ourselves to see if we can make use of those funds, ma'am. It is very healthy financially.

Ms. BROWN-WAITE. Great. Certainly, Ms. Davis' bill and my bill, I think, should in some way be combined. Our goals clearly are the same. I look forward to certainly working with her and working with the VA, as well as the chairman, to accomplish that.

Mr. EPLEY. We would be happy to work with you on that, ma'am. We support the concept, clearly.

Ms. BROWN-WAITE. Thank you very much.

Mr. BROWN. If there are no further questions, Mr. Carr, Mr. Epley, and Mr. Thompson, we thank you for being with us today. We look forward to hearing from the next panel.

Mr. CARR. Thank you, Mr. Chairman.

Mr. BROWN. We are pleased to have as the lead witness on panel four the National Commander of the American Ex-Prisoners of War, Mr. F. Paul Dallas. Mr. Dallas, it is not often that we have a national commander testify at the subcommittee level. Thank you for being here.

Following Mr. Dallas will be Mr. Richard Jones, National Legislative Director of AMVETS, and Mr. Carl Blake, Associate Legislative Director of the Paralyzed Veterans of America.

Welcome, gentlemen. Mr. Dallas, we will hear from you at this time.

STATEMENTS OF F. PAUL DALLAS, NATIONAL COMMANDER, AMERICAN EX-PRISONERS OF WAR; RICHARD JONES, NATIONAL LEGISLATIVE DIRECTOR, AMVETS; AND CARL BLAKE, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

STATEMENT OF F. PAUL DALLAS

Mr. DALLAS. Thank you. Chairman Brown, members of the Subcommittee on Benefits, thank you for the opportunity to comment on behalf of the American Ex-Prisoners of War on legislation, H.R. 348, the Prisoners of War Benefits Act of 2003, and H.R. 2206, the Prisoner of War/Missing in Action National Memorial Act.

There is an urgency, a great urgency, to take action on legislation affecting POWs. Most are World War II or Korean War veterans, and now dying at the rate of greater than ten a day. Legislation delayed is legislation denied.

Long term damage to the health of POWs has been exhaustively studied for more than 50 years by the National Academy of Sciences and other appropriate bodies. They have documented beyond any reasonable doubt that there are long term health consequences.

Presumptives simply take the burden off the individual POW of having to prove that his health conditions are the cause of the POW experience. They have made it possible to gain service connection for conditions shown by research to e causally related to the captive experience. H.R. 348 would add five such conditions.

On July 10, 2003, Daniel L. Cooper, Under Secretary for Benefits, testified before the Senate Committee on Veteran's Affairs. He stated that the extreme adversities common to the POW experience did have long term health consequences. He indicated that on merit, VA could support those same presumptives under consideration by the Senate. He emphasized that VA is committed to properly compensate POWs for their long term health consequences.

H.R. 348 would add heart disease, stroke, and liver disease to the presumptive list, also osteoporosis and adult onset diabetes. Osteoporosis results from the fact that under extreme malnutrition, the human body takes calcium from the bones. To a large degree, calcium loss cannot be replaced. A greater vulnerability to diabetes is also a consequence of severe stress and extreme malnutrition common to the POW experience.

While the VA administratively under Public Law 108–183 legislatively added cirrhosis of the liver to the presumptive list, the designation of chronic liver disease more accurately reflects the National Academy of Sciences' findings.

We urge the committee to add all of these conditions specified in H.R. 348 to the presumptive list. They are unquestionably warranted by the evidence and long time overdue.

It is likely that the Budget Office over estimated the cost of this legislation by not considering the increasing mortality of current service-connected POWs dying and being taken off the compensation rolls as an offset against the costs. However, even if there was

some additional costs, our nation has an obligation and an absolute obligation to these veterans who sacrificed health as well as freedom for their country. They have waited 50 years for their conditions to be made presumptives, and should not be held hostage to the budget process.

Mr. Chairman, I would like to add an addendum to this testimony, if I may. Veterans exposed to Agent Orange in Vietnam experienced high rates of certain disabilities, scientifically associated with exposure, Congress provided for presumptives for service connection.

When veterans returning from Service in the Persian Gulf experience high rates of certain symptoms or clusters of symptoms then veterans without such Service, Congress provided for presumptives of service connection for diagnosed and poorly defined illnesses.

America's former prisoners of war have demonstrated higher rates of certain disabilities than other veterans, and Congress should likewise provide a presumption of service connection. It is unfair to place the higher burden of proof on ex-POWs than on the other groups.

Congress should act now and address these injustices.

I'd like to make one more comment concerning the costs, if I may. With the rates that the POWs are dying, it would be impossible to add—if this bill passed, it would be impossible to add more to the list receiving the compensation than are dying. I can't understand how this bill would add any costs at all. Over 1,200 a year are dying right now.

We have 400 POWs in less than 30 days. Some of those have already been able to get compensation. Between 100 and 200 of those, if my figures are correct, could possibly be added to the list if you pass this legislation, and even if only one was able to obtain the benefits he deserves, it's worth the legislation being passed.

Thank you, and we will receive questions if you have any.

[The prepared statement of Mr. Dallas appears on p. 115.]

Mr. BROWN. Thank you, Mr. Dallas. We will hold questions until all panel members have had a chance to testify.

Mr. Jones, we will take testimony from you now. Thanks for being here.

Thank you, Mr. Dallas, for your commitment to this great country. We will have questions later. Thank you.

Mr. DALLAS. Thank you.

STATEMENT OF RICHARD JONES

Mr. JONES. Chairman Brown, Ranking Member Michaud, members of the subcommittee, on behalf of AMVETS National Commander John Sisler and the nationwide membership of AMVETS, I am pleased to offer our views on the legislation before you today.

It is a pleasure to sit beside Commander Davis who speak about your commendable legislation, H.R. 348, the Prisoner of War Benefits Act. This measure was introduced by Vice Chairman Bilirakis, essentially to improve the benefits for former prisoners of war.

AMVETS agrees that prisoners of war deserve our gratitude and respect for their sake and the sake of everyone who wears the military uniform.

We need to do right for America's sons and daughters held prisoner of war. AMVETS supports the bill.

Regarding H.R. 843, the Injured Veterans Benefits Eligibility Act of 2003, introduced by Representative Reyes, this bill would expand full service-connected disability benefits for individuals disabled by treatment or vocational rehabilitation which had been provided by VA.

While the benefit for service connection is generally related to a servicemember's past military experience, AMVETS does not oppose service-connected coverage for individuals who are disabled as a result of their exposure to VA care.

With regard to H.R. 1735, a bill to increase the maximum amount of home loan guarantee for veterans, this bill was introduced by Representative Davis. It would increase the maximum loan guarantee to $81,000 from the current level of $60,000.

This change in guarantee will increase the no down payment VA home loan guarantee limit, and under the current formula, we understand the VA guarantees 25 percent of the available loan, up to the guarantee limit. This would allow veterans to look at homes in the market range of $324,000 and below with no down payment.

With housing prices in certain parts of the country rising as quickly as they are, this bill would help veterans obtain a home through the VA home loan program, which was once the flagship of VA.

This is a program that deserves your attention. We are pleased to have this bill before you, and AMVETS fully supports H.R. 1735.

H.R. 26223, the Veterans Adapted Housing Expansion Act introduced by Ranking Member Michaud, would expand the VA Secretary's authority to provide specially adapted housing assistance to veterans with permanent and total service-connected disabilities. AMVETS fully agrees that those who are severely disabled through their Service to their country deserve more generous and more liberal benefits than they currently receive. This would be one grand step in the right direction.

With regard to the Prisoner of War/Missing in Action National Memorial Act, introduced by Representative Calvert, AMVETS supports this bill, and it is our hope that such a designation would continue the work that ensures that future generations understand the courage of these men and women who sacrificed so much for our freedom, and they did so in defense of the liberties we hold dear.

With regard to H.R. 4065, the Veterans Housing Affordability Act, this bill compliments the earlier legislation we spoke of regarding VA's home loan program. The one adjustment is that it is self adjusting and indexed. It might be a wise idea. We seem to stumble over this issue every few years as veterans begin to try to use that benefit and find that rather than no down payment, they are paying a 20 percent down payment like everyone else who has access to many Federal guarantee programs, but of course, the difference is they are servicemembers who have stood in military uniform.

We think that an inflation adjustment would be a wise one, and we hope the VA can support it, too.

Regarding the draft bill, codifying presumption of service connection diseases when occurring in veterans exposed to ionizing radiation, AMVETS supports this legislation. The bill was introduced by Ranking Member Evans, and AMVETS fully supports this section as it recognizes the serious adverse health consequences of these exposures during military service.

With regard to H.R. 3936, locating the U.S. Court of Appeals for Veterans Claims' facility in a location in the metropolitan area, the District of Columbia, that is fine with AMVETS. We believe it should be upgraded. We look forward to your decision on this bill.

Thank you for the opportunity to present our views.

[The prepared statement of Mr. Jones appears on p. 84.]

Mr. BROWN. Thank you, Mr. Jones. Mr. Blake.

STATEMENT OF CARL BLAKE

Mr. BLAKE. Chairman Brown, Ranking Member Michaud, we would like to thank you for the opportunity to testify today on the proposed legislation.

H.R. 348 would ease the difficulty associated with receiving a service connection for diseases occurring as a result of being a prisoner of war. It would also add several diseases to the list of presumptive conditions.

PVA supports these provisions of the legislation.

PVA fully supports providing a veteran or his or her family benefits if they are disabled by VA treatment services in accordance with the provisions of H.R. 843.

PVA supports in concept H.R. 1735 and H.R. 4065, which would increase the home loan limit available from the VA. These proposals are in accordance with the proposal made by The Independent Budget for fiscal 2005, to increase the maximum VA loan guarantee.

PVA also agrees with the provisions of H.R. 4065 that would allow the home loan guarantee amount to have an automatic annual adjustment.

H.R. 2206 calls for the designation of a POW/MIA memorial located at Riverside National Cemetery in Riverside, California. PVA has no objections to the proposed memorial. As we have recommended in the past with respect to the authorization of national memorials, we urge the designers of this memorial to make every effort to ensure full accessibility for disabled veterans and citizens in the memorial design.

H.R. 2612 authorizes the VA to provide the specially adapted housing grant to veterans with a total and permanent service-connected disability due to the loss or loss of use of both upper extremities, such as to preclude use of the arms at and above the elbows.

PVA interprets this legislation to mean that a qualifying veteran who no longer has use of not only his or her lower arms, but specifically the elbow joint as well. Veterans who have loss of both upper extremities face not only obvious every day challenges, but also less obvious mobility impairments associated with balance.

PVA supports H.R. 2612. We must, however, underline the importance of ensuring that the intent of the subcommittee be made clear, to guarantee that the broadest number of veterans be covered by this legislation.

PVA supports H.R. 3936, which would authorize the U.S. Court of Appeals for Veterans' Claims to be located anywhere in the Washington, DC metropolitan area. PVA is also pleased to see that Congress recognizes the need to have a dedicated veterans' courthouse and justice center.

PVA also believes that it is important to allow the individuals who regularly practice before the court to reside there as well. This would include representatives from the Veterans' Consortium Pro Bono Program, the National Veterans' Legal Services Program, and appellate attorneys from veterans' service organizations.

PVA, along with many other veterans' service organizations, maintain a strong presence before the court, and it is important that they be allowed to continue to have easy unrestricted access.

Under current law, servicemembers who first entered military service before June 30, 1985 and continue to serve are ineligible for the Montgomery GI Bill benefits.

The proposed legislation would remove the restriction on eligibility for the MGIB for the military personnel who entered Service prior to June 30, 1985. In accordance with the recommendation of the TIB, PVA supports this legislation.

PVA supports H.R. 4173 that directs the Secretary of VA to contract for a report on employment placement, retention and advancement of recently separated servicemembers. PVA has worked with many of the veterans' service organizations to ensure that veterans' preference rights in Federal hiring are protected. We remain concerned that the Federal Government is not doing enough to recruit new veterans to the workforce.

The success of veterans seeking employment in the private sector is much less clear. Despite the reassurances of various business executives who recently testified before the full committee that they were hiring veterans, we have not seen hard facts on the number of men and women leaving the military and entering the workforce.

This report would hopefully provide a better reflection of the hiring trends of businesses in this country.

PVA supports H.R. 4172 that would add certain additional diseases to the list of diseases presumed to be service-connected for veterans exposed to ionizing radiation. Currently, radiation exposed veterans who have received a payment under the Radiation Exposure Compensation Act, RECA, are barred from receipt of VA compensation by 38 CFR 3.715.

PVA also understands that the VA has taken interpretation of this regulation one step further. If a veteran currently receiving VA compensation is granted a RECA payment, the VA stops payment of compensation to that veteran.

Section 2 of the proposed legislation would prohibit the VA from denying compensation to veterans exposed to radiation just because they received a payment under RECA.

The bill would restore the original intent of the compensation program so that payments from VA or RECA would be offset against the other. This would prevent dual payment for the same disability.

PVA would like to thank you for holding this hearing on this proposed legislation today, and I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Blake appears on p. 89.]

Mr. BROWN. Thank you. Mr. Michaud, do you have a question?

Mr. MICHAUD. No questions, Mr. Chairman.

Mr. BROWN. Gentlemen, thank you very much for coming today and giving us your insight to this important legislation, and thank you to your organizations for your service to our veterans. We are grateful for you all taking the time to come. Thank you so very much.

Will the next panel come forward?

Thank you all for waiting. This has been a long session. We have certainly received some great testimony.

Mr. John McNeill is the Deputy Director of the National Veterans Service at the Veterans of Foreign Wars. Mr. Brian Lawrence is Assistant National Legislative Director of the Disabled American Veterans, and Ms. Cathleen Wiblemo is the Deputy Director of Veterans Affairs and Rehabilitation Division of The American Legion.

Thank you all for being here today. We will begin with Mr. McNeill.

STATEMENTS OF JOHN McNEILL, DEPUTY DIRECTOR, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; BRIAN E. LAWRENCE, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; AND CATHLEEN WIBLEMO, DEPUTY DIRECTOR, VETERANS' AFFAIRS AND REHABILITATION DIVISION, THE AMERICAN LEGION

STATEMENT OF JOHN McNEILL

Mr. MCNEILL. Thank you, Mr. Chairman. The Veterans of Foreign Wars supports all nine bills. I will elaborate.

H.R. 348 completes the repeal started by Public Law 108–183 of the 30-day internment requirement for application of presumption requirements for certain disabilities associated with prisoners of war.

This repeal has been the topic of past resolutions by the VFW, and we support the extension now to the remaining disabilities as indicated in section 1112 of the Code.

We support H.R. 843 that will provide eligibility to ancillary benefits to veterans unintentionally injured while under the VA's care. However, we would like to add that the same consideration should also be extended to those veterans who are "as if service-connected," under the provisions of Section 1160 of the Code, which is commonly known as the "impaired organs law".

The disabilities listed in Section 1160 would usually be more severe than those that are normally under Section 1151, but the current legislation will not cover Section 1160 veterans. Any possible consideration by the subcommittee would certainly be very much appreciated by us.

Both H.R. 1735 and H.R. 4065 are excellent proposals, but particularly so for our young active duty soldiers attempting to purchase their first home. This latter group are quite often overlooked when it comes to realizing the value of the home loan guaranty program.

The VFW's Department of California and many of the local VFW posts in Southern California have labored extensively, including raising significant funds, for a national memorial to our prisoners of war and those missing in action. H.R. 2206 would now acknowledge these efforts to provide a fitting dedication to those who did, and actually are still doing, so much for our country.

H.R. 2612 will now qualify those very severely disabled veterans with loss or loss of use at or below the elbows for special adaptive housing. This is a critical distinction and a commendable proposed extension of a very important entitlement that will extensively assist these very seriously disabled veterans in adjusting to a new way of life.

We only have to recall all the recent news coverage concerning the extremity injuries involving our Iraqi Freedom and Enduring Freedom personnel, and you can see the potential impact of Congress' support through this legislation.

The draft Veterans Education Opportunity Act of 2004 is an opportunity finally now to provide a viable educational opportunity for those military who only had the inadequate Veterans' Educational Assistance Program (VEAP).

This legislation has been requested for many years, and action as directed in this draft bill is appropriate.

By most measures, the Transition Assistance Program is very successful, and particularly so as part of the VA's Benefits Delivery at Discharge program. H.R. 4173's direction to contract for a report on employment placement, retention and advancement of recently separated servicemembers will make an excellent program even better.

We previously testified on June 10, 1999 recommending the disabilities identified in H.R. 4172 for inclusion as presumption of service connection for exposure to ionizing radiation. Actually, in the 1999 testimony, we identified ten additional disabilities as our belief that of established as presumption would achieve equality to what has been historically provided to the Marshall Islanders.

However, the differences here are for discussion at a later time because this proposed bill is over all exemplary in its purpose.

We request one clarification as to whether cancers of the brain will incorporate cancer of the central nervous system. We feel it should with the close correlation of these cancers.

We also have a suggestion that veterans who served in the nuclear submarine service and those who were nuclear weapons handlers service should likewise be included in the legislation, with their similar duties and responsibilities as the identified Department of Energy personnel.

As stated by Chief Judge Kramer, a dedicated courthouse will maximize productivity and minimize labor resources by allowing the combined housing of not only the court but also VA general counsel and personnel and organizations involved directly in veterans' jurisprudence work before the court.

We strongly and emphatically support H.R. 3936.

This concludes my comments on the legislation, but this also provides an opportunity for us to formally thank you, Mr. Chairman, and all the members for what you did for veterans in the first ses-

sion of the 108th Congress through the eventual enactment of Public Law 108–183.

It seems, and for mostly for the right reasons, VA health care dominates the news, but there were significant legislative measures that germinated in this very subcommittee and received hardly any publicity, but through Congress' hard work, are now altering lifestyles to the betterment of veterans and their families.

We in the VFW regularly hear from individuals who have been positively impacted by what you did last year, and we are very quick to tell them that their thanks must be extended to you, the Congress.

When you ever go home after a bad day at the office, please always remember there are veterans and their family members who are very quietly appreciating what you have accomplished for them as our legislative leaders.

Thank you.

[Applause.]

[The prepared statement of Mr. McNeill appears on p. 97.]

Mr. BROWN. Thank you, Mr. McNeill. We are going to invite you back at every meeting.

[Laughter.]

Mr. MCNEILL. I'm not sure the staff will.

[Laughter.]

Mr. BROWN. Mr. Lawrence.

STATEMENT OF BRIAN E. LAWRENCE

Mr. LAWRENCE. Thank you, Mr. Chairman. My written statement addresses all the legislation on today's agenda, but for the sake of brevity, I will restrict my comments to the bills that are pertinent to DAV resolutions through The Independent Budget.

H.R. 348 would eliminate the requirement for a minimum period of internment for eligibility for presumptive service connection, and it would also expand the list of diseases determined to be presumptively service-connected.

The DAV fully supports this bill. As the subcommittee is aware, military personnel captured in war are often subjected to brutal psychological and physical treatment, inadequate nutrition and lack of medical care.

Such deprivations and abuse often lead to diseases that manifest several years after relief of such activity.

We urge that the proposals contained in the Prisoner of War Benefits Act of 2003 be favorably acted upon by the subcommittee.

H.R. 843 would provide for service-connected disability benefits to veterans injured as a result of medical treatment or vocational rehabilitation provided by the VA. Title XXXVIII of the United States Code, Section 1151, provides that a disability sustained as a result of VA medical treatment or vocational rehabilitation shall be compensated "as if" service-connected.

According to VA general counsel opinions, the words "as if" distinguish disabilities caused by these programs from disabilities incurred during active military service. The VA provides basic compensation but refuses to provide ancillary benefits, such as a grant for a specially adapted home or automobile.

H.R. 843 would amend Section 1151 to make clear that a disability sustained as a result of these VA programs shall be considered fully service-connected.

The DAV supports this bill. We believe all benefits associated with service connection are due under existing law. In our view, a disabled veteran who is denied an essential benefit such as s specially adapted housing grant, is not being treated as service-connected.

We urge that the proposals obtained in this bill be favorably acted upon by the subcommittee.

H.R. 1735 would increase the maximum amount of a VA home loan guarantee from $60,000 to $81,000, and H.R. 4065 would increase the maximum amount of the home loan guarantee and provide for an annual adjustment to that amount.

The IB has recommended adjusting the home loan guarantee and it also recommended an annual indexing adjustment to 90 percent of the Fannie Mae/Freddie Mac loan ceiling.

We are pleased that the subcommittee recognizes the need for an increase, along with an annual adjustment, and in accordance with the IB, we support these bills.

H,R. 2612 would expand specially adapted housing to veterans with loss or loss of use of both upper extremities. Again, we support this bill.

We acknowledge the benefits this would provide to such catastrophically disabled veterans. Veterans who sacrifice severely in the name of freedom have earned any measure we can provide to make their lives as normal as possible. We urge the subcommittee to act favorably upon this bill.

H.R. 3936 would authorize that the U.S. Court of Appeals for Veterans Claims be at any location in the DC metropolitan area rather than only in the District of Columbia. The DAV fully supports this bill. Although the Court has existed for more than 14 years, it does not have a building of its own. Since its inception, the Court has been a tenant in commercial office spaces. Expediency was a priority during the establishment of the Court, and leasing property allowed for greater expediency, but it does not offer a long term solution to the need for space.

The needs of the Court and those it serves have increased since it was established. Rather than seek a larger facility, we urge that a Veterans Courthouse and Justice Center be provided to the Court and those it serves.

H.R. 4173 would direct the VA to contract for a report on employment placement, retention and advancement of recently separated servicemembers. Feedback information is necessary to evaluate the success of any program and information obtained in this study could be used to guide future efforts to assist veterans.

We acknowledge that this study could be helpful or an asset to the VA. DAV believes that any such study should involve the Veterans Employment and Training Service, and we also suggest that H.R. 4173 should be amended to make the contract a set aside for a disabled veteran owned business.

Mr. Chairman, I will pass on addressing the remaining bills, and just thank you for this opportunity. You have our written testi-

mony. Again, thank you for this opportunity to present our views on these bills.

[The prepared statement of Mr. Lawrence appears on p. 105.]

Mr. BROWN. Thank you, Mr. Lawrence. Ms. Wiblemo, you have been patiently waiting for a long time. Thank you for being here, and we will hear your testimony now.

STATEMENT OF CATHLEEN WIBLEMO

Ms. WIBLEMO. Thank you, Mr. Chairman.

On behalf of the American Legion, I would like to thank the subcommittee for this opportunity to present our views today on these various bills and draft legislation of interest.

The American Legion is pleased to support H.R. 348, the Prisoner of War Benefits Act. We have long supported improvements in benefits provided to these unique and brave individuals and their survivors.

While we are heartened by the proposed additions to the presumptive list, the American Legion has a long-standing mandate calling for the inclusion of chronic pulmonary disease, where there was a history of forced labor in mines during internment and generalized osteoarthritis, as differentiated from the currently listed disability of "post-traumatic arthritis."

The American Legion will continue to advocate for the inclusion of these diseases to the presumptive list.

Regarding H.R. 843, The Injured Veterans Benefits Eligibility Act of 2003, the American Legion believes Section 1151 should be interpreted broadly rather than narrowly as it relates to entitlement to additional benefits.

Since this legislation would eliminate any question regarding congressional intent as to the extent of entitlement to VA benefits authorized under Title XXXVIII USC, Section 1151, the American Legion offers no objection to this bill.

H.R. 1735 seeks to amend Title XXXVIII to increase the amount of the home loan guarantee available to a veteran from $240,000 to $324,000. The American Legion supports this bill. This proposal is an appreciable increase and is commensurate with the American Legion's mandates.

H.R. 4065, The Veterans Housing Affordability Act of 2004, proposes increasing the maximum amount of a home loan guarantee to $333,700 effective January 1, 2004, and providing for annual indexing of the maximum amount of the home loan guarantee to the current year Freddie Mac limit.

Home ownership is an increasingly elusive goal for veterans to realize. The rising housing costs in many of the metropolitan areas nationwide effectively places beyond their reach the chance to own a home.

H.R. 4065 will help to considerably ease the burden of qualifying for home loans and indeed, make it more affordable for veterans to be home owners.

Both H.R. 1735 and H.R. 4065 will achieve the objectives stated by National Commander John Brieden in his testimony before a joint session of the House and Senate Veterans' Affairs Committees that the VA home loan guarantee of $240,000 should be raised to $300,000.

H.R. 2612, The Veterans Adapted Housing Expansion Act of 2003, seeks to provide specially adapted housing assistance to veterans with permanent and total service-connected disabilities due to loss of use of both upper extremities. Clearly, veterans who have suffered loss or loss of use of both upper extremities are very seriously disabled. Extending entitlement to specially adapted housing assistance under Title XXXVIII, which H.R. 2612 proposes, will undoubtedly improve the quality of life for these veterans, and we are pleased to support this bill.

The American Legion offers no objections to H.R. 3936 that authorizes the relocation of the U.S. Court of Appeals for Veterans Claims.

The American Legion is pleased to support The Veterans Educational Opportunity Act of 2004. This legislation will enable eligible veterans to take advantage of the Montgomery GI Bill benefit of $985 per month for 36 months for a total of $35,000. This bill widens the window of opportunity for affordable education for very deserving veterans.

H.R. 4173 is a bill that directs the Secretary of Veterans' Affairs to contract for a report on employment placement, retention and advancement of recently separated veterans. While the American Legion has no official position, the Veterans' Employment and Training Service of the Department of Labor seems to be a more appropriate agency to carry out this study. VETS is already responsible for a number of programs regarding employment issues.

Further, the Bureau of Labor Statistics cited in the scope of work as the primary source of data for this study is also a DOL agency.

H.R. 4172 would codify certain additional diseases as establishing a presumption of service connection when occurring in veterans exposed to ionizing radiation during active military, naval or air service. The American Legion has long advocated for expansion of the definition of a radiation risk activity, and this proposed amendment would overcome the inequities that exist under Title XXXVIII and make it easier for these atomic veterans or their survivors to obtain the benefits to which they are rightfully entitled.

Additionally, the proposed expansion of presumed radiation related diseases is a needed change. While the American Legion fully supports the draft bill, we would like to recommend that consideration be given to amending it to specifically add to the list of diseases cover under Title XXXVIII chronic beryllium disease and chronic silicosis. These diseases are currently covered under the Radiation Compensation Act of 1990. Inclusion of these diseases is necessary to ensure the statute reflects all of the environmental hazards associated with veterans' participation in the nation's nuclear weapons program.

Considering H.R. 2206 authorizing a national prisoner of war/missing in action memorial in the State of California, the American Legion supports efforts to recognize the sacrifices of our POWs and MIAs, and the memorial provides much needed recognition of the unique sacrifices made by these servicemembers.

The American Legion has commented today on numerous bills and draft legislation regarding veterans' benefits, all important to improving the welfare of our nation's veterans, and I thank the subcommittee once again for this opportunity.

[The prepared statement of Ms. Wiblemo appears on p. 110.]

Mr. BROWN. Thank all of you for coming and expressing your concerns and opinions on these important bills.

Mr. Michaud, do you have a question?

Mr. MICHAUD. Thank you, Mr. Chairman. First, Mr. Chairman, I would ask leave to submit a VA document concerning the FTCA awards for the record.

(See p. 46.)

Mr. MICHAUD. I would also like to thank all of the SOs for all that you do for the veterans here in this country. I am just amazed, having been a Member of Congress for a little over a year, of the amount of time and effort that you put into making sure that the Congress treats our veterans right. I really appreciate all the hours that you put into that effort. Without you, we would not be seeing some of the legislation that we see come out of Congress.

I appreciate your keeping the Members of Congress on top of this very issue, and hopefully, ultimately, we will get mandatory funding so you can focus a lot of attention on bills that we have heard today, and we look forward to continuing to work with you.

Finally, Mr. Chairman, I would like to thank you for all your efforts and working in a bipartisan manner, not only here today with the selection of these bills we are hearing, but also for your long time efforts in supporting issues important to veterans all around the country.

I really appreciate your efforts. Thank you very much, Mr. Chairman.

Mr. BROWN. Thank you, Mr. Michaud. I also would like to echo my appreciation for your involvement in the process. It's a great process. I can certainly echo Mr. Michaud's thoughts that this is a non-partisan committee, although we have ranking members, Republicans and Democrats, the veterans' issues are bipartisan, and we certainly address those issues on a bipartisan manner.

We appreciate those thoughts you have, although we recognize the gratitude to our veterans, and there is not enough that we can do for our veterans. We don't necessarily look for a lot of praise ourselves, but we want to give praise to those that give us this right to be here, those who have defended the freedom of this country.

I'm grateful to have the chance to serve and give as much support as possible.

To conclude this meeting, hearing no objection, I would like to enter into the record statements by the Vietnam Veterans of America, the Mortgage Investors Corporation, the Mortgage Bankers Association, the National Association of Realtors, and United Spinal Association.

(See pp. 118, 120, 124, and 126.)

Mr. BROWN. With nothing further to come before the committee, we stand adjourned. Thank you all for coming.

[Whereupon, at 11:46 a.m., the subcommittee was adjourned.]

APPENDIX

Opening Statement of The Honorable Michael Michaud
Ranking Democrat – Subcommittee on Benefits House Veterans Affairs
Committee Legislative Hearing
April 29, 2004

Thank you, Chairman Brown.

We have an ambitious agenda for today's hearing and I thank you for that.

Before us for consideration are 9 bills and one draft bill.

I am a cosponsor of most of these measures, and I am pleased that two measures that I have introduced are being heard.

As the nightly news reminds us, many of our Nation's finest men and women are risking their lives in Iraq, Afghanistan and around the world.

The sad reality is that some of them will come to harm, and we should not forget their sacrifice.

The measures under consideration today will provide a host of benefits earned by our veterans.

They are intended to improve the lives of those who have suffered as prisoners of war; been injured while receiving medical care from the VA; or those who have contracted certain cancers as the result of exposure to radiation during their military service.

They will improve the ability of veterans to obtain VA home loans in areas of the country where housing prices have risen substantially.

Other measures will honor our veterans by supporting the establishment of a dedicated courthouse for the United States Court of Appeals for Veterans Claims and dedicating a National Memorial to Prisoners of War and Missing in Action at Riverside National cemetery.

Measures intended to provide education and economic opportunities for our servicemembers and veterans are also included within the list of bills to be heard today.

I am pleased that we are exploring an opportunity for another open window for certain VEAP decliners to enroll in the Montgomery GI Bill.

I also look forward to working with Chairman Brown to successfully develop a much-needed study and report on employment placement and economic opportunities of recently separated servicemembers since the end of the first Gulf War.

I will discuss H.R. 2612 to expand the VA adapted housing program during the second panel.

I would also like to extend a warm welcome to our colleague, the gentleman from California, Mr. Calvert, who will be discussing his legislative proposal.

I also want to welcome Chief Judge Kramer of the United States Court of Appeals for Veterans Claims.

I look forward to hearing from Mr. Epley of the VA and Mr. Carr of DoD, as well as all of our witnesses from the veterans' service organizations.

Thank you Mr. Chairman. I look forward to today's testimony and yield back the balance of my time.

Statement of the Honorable Michael Michaud
Ranking Democrat – Subcommittee on Benefits
House Veterans Affairs Committee
Concerning H.R. 2612 Veterans Adapted Housing Expansion Act of 2003
April 29, 2004

I want to thank the Chairman for agreeing to consider H.R. 2612, the "Veterans Adapted Housing Expansion Act of 2003." It is a great pleasure for me to speak on a bill which was introduced in response to the request of a severely disabled veteran, Mr. James Moore of Nebraska. Mr. Moore brought to my attention that a small number of veterans, Mr. Moore included, have lost not only both their hands, but both their arms, including loss of function at and above both elbow joints.

These veterans suffer an even more severe disability than those who retain function of the elbow joint. They suffer from balance problems and are less effectively able to use prosthetic devices. As a result they require more extensive adaptations to their homes than those needed because of the loss of both hands. While this bill will provide much needed assistance, the consideration of this bill also tells all American veterans that they can bring their concerns to the attention of this Committee and that their concerns will be heard.

I hope that as veterans risk the loss of life and limb in service to our country, this Subcommittee will mark up H.R. 2612. Passage of this legislation will enable veterans who have lost their arms to obtain a suitably adapted home when they return.

Thank you Mr. Chairman.

Statement for the Record
Honorable Lane Evans
Ranking Member Committee on Veterans Affairs
April 29, 2004

Thank you Mr. Chairman, this measure – H.R. 4172 – is another small step in ultimately achieving equity and full recognition for the brave sacrifices and service of our military personnel who were exposed to ionizing radiation during their often secret and dangerous military duties.

The federal government does not have a proud history when it comes to owning up to the dangers and accepting responsibility for the damage involved with the creation, testing and deployment of atomic weapons. For many years, men and women – civilian weapons workers and military personnel alike – suffered in silence, as our government denied responsibility and objected to their claims for compensation due to injuries and diseases contracted from their service.

It has only been in the last few years that the federal government has started to fully recognize its culpability with respect to the dangers associated with atomic weapons and their testing. Unfortunately, like their comrades from World War II and the Korean War Era, many of our atomic veterans are passing from us at alarming rates. It is my hope that by working to provide equitable treatment to our atomic veterans and their families, we can in some small way attempt to honor their service and recognize their sacrifice to the Nation during a very dangerous time in our history.

Section 1 of this legislation codifies in statute five additional cancers (bone, brain, colon, lung, and ovarian) to the list of those diseases presumed to be service-connected for veterans exposed to ionizing radiation while in service. On March 26, 2002, the VA recognized by regulation these five additional cancers as presumptively service-connected for purposes of awarding disability compensation under the VA's atomic veterans' program. By codifying these five diseases in statute, we will be affirming equity between veterans and civilians, as well as promoting consistency throughout the

federal government's comparable benefit programs, which provide compensation for injuries resulting from radiation exposure during service to the Nation.

Section 2 repeals a regulatory bar to applying for VA benefits if an individual previously received any compensation under the Radiation Exposure Compensation Act (RECA) – a Justice Department administered program for cancers caused due to "onsite participation" in radiation-risk activities. Specifically, this measure would provide the VA a mechanism to offset such other awards – eliminating the risk of dual compensation – and subsequently provide the appropriate compensation due to the eligible veteran or surviving spouse. Currently, the Justice Department has the ability to offset VA awards of compensation; the VA does not have this reciprocal right.

The need to repeal this regulatory bar and provide a mechanism to offset other comparable federal benefits is especially critical for individuals who contracted one of the five additional cancers prior to the VA's decision to presume such cancers as service-connected by regulation in March of 2002. Before the VA had presumed these five cancers as service connected for radiation-risk activities many veterans' claims were denied. Accordingly, some veterans or their surviving spouses, applied for the lesser benefits available under RECA, which already recognized these same diseases as presumptively caused by ionizing radiation. However, once accepting the RECA award these veterans or their spouses now are barred by VA regulations from any further compensation, including DIC and other ancillary benefits. Without repealing this regulatory bar and providing a system to offset such prior RECA awards, we will fail in our efforts to provide equity, fairness and consistency to those who served the Nation so well in its time of great need. The time is right to fix this problem, and address this inequitable treatment of our atomic veterans and their survivors.

Thank you Mr. Chairman.

The Honorable Michael Bilirakis
Subcommittee on Benefits
April 29, 2004

H.R. 348, the Prisoners of War Benefits Act

Thank you Mr. Chairman. I appreciate the invitation to testify before you and the other members of the Subcommittee on Benefits regarding my legislation, H.R. 348, the Prisoners of War Benefits Act.

Since coming to Congress, I have worked hard as an advocate for our Nation's veterans. I've had a special place in my heart for our former prisoners of war (POWs) because of all they had to endure in captivity. They have truly paid a tremendous price for the liberty we all cherish. Over the years, I've introduced several legislative initiatives on behalf of former POWs and their spouses. In the 108th Congress, I have introduced the Prisoners of War Benefits Act, which as the name implies, is intended to improve the benefits currently available to former POWs.

In 1981, Congress established several service-connected presumptions for certain medical conditions that affect former prisoners of war. However because a very high level of research certainty (95%) was required before establishing presumptive status, many other medical problems common in POWs have been excluded.

My legislation establishes service-connected presumptions for five additional medical conditions: heart disease, stroke, liver disease, Type II diabetes and osteoporosis. I worked with the American Ex-Prisoners-of-War to identify these conditions as having strong evidence of a relationship between the POW experience and the onset of the disease. I would note that after I introduced H.R. 348, Secretary Principi established a presumption for cirrhosis of the liver for former POWs, which was codified as part of the Veterans Benefits Act of 2003 (Public Law 108-183).

Congress has passed legislation giving the Department of Veterans Affair (VA) specific standards for determining whether the addition of new presumptive diseases for Vietnam and Gulf War veterans is warranted. These standards require a positive association for the adoption of a presumptive condition. However, Congress has not established a process for VA to add to the list of former POW presumptive diseases established in 1981.

Therefore, I included a provision in H.R. 348 to establish a process by which the VA could determine future presumptive conditions for former POWs when there is a positive association between the experience of being a prisoner of war and the occurrence of a disease or condition. Under my legislation, the VA Secretary would have to review the recommendations of the Advisory Committee on Former Prisoners of War and all other sound medical and scientific information and analyses available when making these

determinations.

Under current law, to be eligible for disability compensation for conditions presumed to be service-connected for former POWs, a veteran must have been held in captivity for 30 or more days. However, a former POW can still be eligible for disability compensation for a presumed service-connected condition if he or she can prove that it is connected to military service.

At the time some of the original POW presumptions were enacted, short-term prisoners of war were unusual. Prisoners of war from more recent conflicts have been confined for shorter periods of time. H.R. 348 would remove the 30-day minimum requirement, making all former POWs eligible regardless of how long they were held captive. I based this provision on the recommendations of the VA's Advisory Committee on Former Prisoners of War, which concluded in 2001 that this 30-day requirement should be repealed.

According to the Congressional Budget Office, of the 37,000 living former POWs, no more than 400 were held captive for less than 30 days. About 70 percent, or around 280, of these former POWs are already receiving disability compensation based on their eligibility as a veteran. Consequently, CBO estimates that the cost of this provision would be less than $500,000 per year.

After the introduction of H.R. 348, Congress enacted a partial repeal of the 30-day minimum requirement as part of the Veterans Benefits Act of 2003 (Public Law 108-183). Specifically, the new law eliminated the requirement that a POW be held for 30 days or more to qualify for presumptions of service-connection for certain disabilities: psychosis, any of the anxiety states, dysthymic disorder, organic residuals of frostbite, and post-traumatic osteoarthritis. Although the new law does not completely repeal the 30-day requirement, I was pleased that Congress took these initial steps and hope that more can be done in this regard.

Congress has acted on one other provision included in my legislation. Section two of the bill would allow all former POWs to receive free dental care from the VA regardless of the length of their internment. The Veterans Health Care, Capital Asset and Business Improvement Act of 2003 (Public Law 108-170) contains an identical provision. Therefore, action is no longer needed on this particular provision in H.R. 348.

Mr. Chairman, I look forward to working with you and the other members of the Subcommittee on this important issue. I will be happy to answer any questions about my legislation.

STATEMENT ON H.R. 1735
SUBCOMMITTEE ON BENEFITS
REP. SUSAN DAVIS (CA-53)
APRIL 29, 2004

Let me begin by thanking you, Mr. Chairman, for bringing this issue to the forefront and for addressing the need to adjust the current VA home loan limit.

This is a crucial issue to any veteran seeking to purchase a home, and I am committed to giving America's retired military personnel new opportunities for home ownership.

The lowering of interest rates in recent years has pushed up housing costs to record highs. In Southern California, for example, the average price has reached $375,000.

In San Diego, housing costs are even higher, averaging well over $400,000. As you can imagine, I have heard from plenty of my veterans on the VA's home loan program and its limitations.

Simply put, veterans living in high-cost areas cannot use the VA loan because the current limit of $240,000 is not enough to purchase a home. Instead of taking advantage of the benefits that come with the VA home loan, our retired military personnel must rely on traditional lenders.

I am also deeply concerned that many veterans will never have the opportunity to buy a home without a subsidized VA loan.

When dramatic shift occurs in the housing market, I feel we have a responsibility to respond and to make the VA home loan compatible with the current conditions.

We have failed to make the necessary adjustments in recent years and America's veterans are paying the price.

Because of my determination to give my veterans in San Diego and veterans across the United States the opportunity to own a home, I introduced legislation to increase the VA home loan limit when I was first elected to

Congress over three years ago. I was quick to reintroduce the same legislation in the 108th Congress.

My bill, H.R. 1735, increases the current limit from $240,000 to $324,000, an amount comparable to the limit set by Freddie Mac and made available to the general public.

I am honored to have bipartisan support for this legislation and I am encouraged with the news that H.R. 1735 could actually save taxpayer dollars. By increasing the limit, more veterans could use the VA home loan – bringing in more revenue through the initial fee charged by the VA.

It is my goal to improve the VA's home loan program this session. I also support efforts to index the VA home loan program to the Freddie Mac criteria in Congresswoman Brown-Waite's bill, H.R. 4065, also before the Subcommittee today. I thank my colleague from Florida for raising this issue.

We should seriously consider indexing the maximum amount to guarantee that the VA limit increases consistently with the Freddie Mac level.

However, I do feel it is important that we set the index to match the Freddie Mac limit. Our veterans deserve to be on equal footing with the general public in today's competitive real estate markets. When I introduced H.R. 1735 one year ago, I proposed an amount slightly higher than the Freddie Mac amount.

Again, Mr. Chairman, I am committed to giving our active duty and our retired military personnel new opportunities for home ownership. I thank you for recognizing the need and for bringing this crucial issue to the forefront.

I am hopeful the Subcommittee will mark up legislation increasing the home loan limit this session. Thank you once again for your consideration of the bill.

SILVESTRE REYES
16TH DISTRICT, TEXAS

COMMITTEE ON ARMED SERVICES

RANKING MEMBER
SUBCOMMITTEE ON STRATEGIC FORCES
SUBCOMMITTEE ON READINESS

COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON BENEFITS

PERMANENT SELECT COMMITTEE
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Congress of the United States
House of Representatives
Washington, DC 20515

Statement of Rep. Silvestre Reyes on
H.R. 843, Injured Veterans Benefits Eligibility Act of 2004
April 29, 2004

Thank you Mr. Chairman and Ranking Member for allowing the Subcommittee to hear H.R. 843. I introduced this legislation during the 107th Congress, as Ranking Member of the Benefits Subcommittee and because of budget restrains and other priorities this legislation did not receive consideration.

With the leadership of the current Ranking Member, Mr. Michaud of Maine and his Subcommittee staff, this issue remained on the forefront of the Subcommittee's agenda. Amid the current budget situation, this bill may have easily been overlooked. And I thank the Chairman and Ranking Member for recognizing the importance and significance of its consideration to our veteran community.

Mr. Chairman, H.R. 843, the Injured Veterans Benefits Eligibility Act of 2004 is an important piece of legislation. This bill is intended to provide additional service-connected disability benefits for persons disabled by medical treatment or vocational rehabilitation provided by the Department of Veterans Affairs. This bill would also cover survivors of persons dying from such disabilities.

When veterans are disabled by medical treatment or vocational rehabilitation activities, they and their families suffer the same economic loss as veterans who are disabled by similar medical conditions during military service. But for their military service, these veterans would not be disabled. It is only right that they and their families receive the same benefits as veterans disabled during military service.

Under current law, these veterans and their survivors are eligible for VA service-connected cash compensation and survivors Dependency and Indemnity Compensation (DIC) benefits, but not other ancillary benefits provided to service-connected veterans. These ancillary benefits include health care for dependents under the "CHAMPVA" program and a $10,000 policy of life insurance provided under the "Service-Disabled Veterans Insurance" program and education benefits for their children. The Congressional Budget Office has estimated that about 1,800 veterans and about 1,200 spouses (including surviving spouses) would qualify for these additional benefits. We should not ask veterans and their families to bear the financial burden of VA's negligence or carelessness.

Mr. Chairman I strongly urge my fellow colleagues of the subcommittee to favorably consider this legislation.

22.06 Amount of Offset

a. **General.** The amount of the offset must not deprive a veteran of any part of the compensation payable to him or her if a claim under 38 U.S.C. 1151 had not been filed. Apply this principle in determining an 1151 offset amount.
b. **No Other Disability.** Offset the full amount of compensation under 38 U.S.C. 1151 if the veteran has no non-1151 service-connected disabilities.
c. **Increased Evaluation.** Determine the compensation for all disabilities (1151 and non-1151 disabilities). Next determine the compensation for non-1151 disabilities. Offset the difference.
d. **Combined Evaluation Unchanged.** Do not offset any amount if the 38 U.S.C. 1151 disability does not increase the total amount of compensation. If VA established an offset, discontinue it if there is an increase in the evaluation of a non-1151 disability such that the 38 U.S.C. 1151 disability no longer increases the total amount of compensation.
EXAMPLE: A veteran has two non-1151 service-connected disabilities each evaluated at 60 percent and a 1151 disability evaluated at 30 percent. The combined evaluation is 90 percent and for the non-1151 disabilities the combined evaluation is 80 percent. Per paragraph c, VA offsets the difference between the 90-percent rate and the 80-percent rate. Subsequently, VA increases one of the 60-percent evaluations to 70 percent. Now the combined evaluation of all disabilities has not changed (remaining 90 percent), but the combined evaluation of the non-1151 disabilities is increased to 90 percent. Therefore, discontinue the offset. In the reverse situation (the 70 reduced to 60), commence the offset.

22.07 Offset Not Applicable

The offset provisions are applicable if compensation for a disability is payable **SOLELY** under 38 U.S.C. 1151. If compensation is otherwise payable for a disability, no offset is required.
EXAMPLE 1: A veteran is rated 10 percent disabled because of a service-connected foot disability. The veteran enters a VA medical center for treatment of the disability. The evaluation is increased to 30 percent due to an aggravation of the injury as a result of the medical or surgical treatment. The veteran sues the hospital and recovers. No offset is required because the foot disability is service connected without regard to 38 U.S.C. 1151.
EXAMPLE 2: A veteran is service connected for a severe pulmonary condition which requires the administration of significant doses of steroids. The veteran later develops cataracts and claims that the cataracts are due to the steroid treatments. The veteran files a compensation claim under 38 U.S.C. 1151. The rating board should consider whether the cataracts are proximately due to or the result of a service-connected disability so that the condition can be service connected under 38 CFR 3.310. If the rating board does grant service connection for cataracts under 38 CFR 3.310, no offset is required.

DATE: 04-29-91

CITATION: VAOPGCPREC 52-91
Vet. Aff. Op. Gen. Couns. Prec. 52-91

TEXT:

Setoff of Federal Tort Claims Act Damages Under 38 U.S.C. § 351

QUESTION PRESENTED:

Are noneconomic elements of damages recovered pursuant to the Federal Tort Claims Act (FTCA) subject to administrative offset under 38 U.S.C. § 351?

COMMENTS:

1. This question arose in the context of settlement discussions in the case of * ** (E.D.Mich. filed May 3, 1989). The plaintiff in * ** is a veteran who suffers from painful and frequent urination allegedly aggravated by chemotherapy resulting from a mistaken diagnosis of bladder cancer. The veteran has been awarded compensation under 38 U.S.C. § 351 for this condition.

2. The applicable statute clearly prohibits double recovery under 38 U.S.C. § 351 and the FTCA, 28 U.S.C. §§ 2671-2680.O.G.C.Prec. 79-90, see infra paragraph 9. Section 351 provides in pertinent part:

Where an individual is ... awarded a judgment ... or ... enters into a settlement or compromise under the applicable sections of the FTCA by reason of a disability, aggravation, or death treated pursuant to this section as if it were service-connected, then no benefits shall be paid to such individual for any month beginning after the date such judgment, settlement, or compromise on account of such disability, aggravation, or death becomes final until the aggregate amount of benefits which would be paid but for this sentence equals the total amount included in such judgment, settlement, or compromise.

The above cited language expressly authorizes VA to setoff against VA compensation granted under section 351 the "total amount" of an FTCA judgment, settlement, or compromise recovered by an individual without regard to whether the recovery was for economic or noneconomic loss. It is well established that the clear and unambiguous language of a statute is to be read to mean what it plainly expresses. See 2A N. Singer, Sutherland Statutory Construction §§ 46.01-.04 (4th ed. 1984) (plain meaning rule--literal interpretation). The plain and unambiguous meaning

of section 351, is to preclude double recovery from the Government for a single injury.

3. This interpretation of section 351 conflicts with an October 23, 1981, decision by the Board of Veterans Appeals (BVA) which incorrectly held that the word "included" as used in section 351 supports a distinction between recoupment of economic and noneconomic damages. The BVA holding is both inconsistent with a literal reading of section 351 and inconsistent with the legislative history of the statute, infra, para. 4. Section 351 clearly provides for offset of the "total amount included" in a judgment, settlement, or compromise. Since Congress expressly directed the "total amount" to be offset, it is simply not relevant whether economic loss was "included" in the FTCA award; both economic and noneconomic damages are subject to offset.

4. Even if we were to assume that the quoted statutory language is ambiguous, the legislative history of Pub.L. No. 87-825 supports the proposition that damages under the FTCA are subject to offset regardless of whether economic or noneconomic in nature. The offset provision was added to section 351 of title 38 by section 3 of Pub.L. No. 87-825, 76 Stat. 948, 950 (1962). The Senate and House committee reports on H.R. 7600, 87th Cong., which ultimately was enacted as Pub.L. No. 87-825, indicate that neither the Senate nor the House of Representatives contemplated an exception from offset for noneconomic damages. The reports of both committees clearly state that "the amount of any recovery pursuant to a civil judgment, settlement, or compromise" (emphasis added) would be set off against compensation benefits. S.Rep. No. 2042, 87th Cong., 2d Sess. 2, reprinted in 1962 U.S.Code Cong. & Admin.News 3260; H.R.Rep. No. 2123, 87th Cong.2d Sess. 2 (1962); see also Letter of Administrator of Veterans Affairs on H.R. 7600 to Chairman, Senate Committee on Veterans' Affairs (August 28, 1962). Further, the Explanatory Statement on H.R.7600, prepared by VA and incorporated in S.Rep. No. 2024, supra, and H.R.Rep. No. 2123, supra, reprinted in 1962 U.S.Code Cong. & Admin.News 3263, 3268, discusses an intention in section 3 to "preclude duplicate recoveries for the same disability or death." The Explanatory Statement observed " i t is possible today for an injured veteran to secure a judgment under the Federal Tort Claims Act and thereafter be awarded disability compensation from the Veterans' Administration for the same injury." Id. The use of the term "same injury" suggests concern with an individual's recovery for the event of the injury, as opposed to the type of damages stemming from that event. The Explanatory Statement went on to indicate the offset of section 351 benefits would continue until the amount withheld "equals the total amount paid under the judgment, settlement, or compromise." (emphasis added) Id. These statements, together with the absence of anything in the legislative history even remotely suggesting a distinction between the offset of economic damages

and noneconomic damages, leads to the conclusion that Congress intended the offset provision of section 351 to encompass all types of damages. See generally 2A N. Singer, Sutherland Statutory Construction § 48.03 (4th ed. 1984) (preenactment history).

5. Although a number of courts have discussed offset in the context of the FTCA, we consider judicial opinion on this issue inconclusive. As noted by the BVA in its October 23, 1981, decision, the Supreme Court examined the issue of the relationship between VA benefits and the FTCA in Brooks v. United States, 337 U.S. 49 (1949). The Court in Brooks stated that, " p rovisions in other statutes for disability payments to servicemen and gratuity payments to their survivors ... indicate no purpose to forbid tort actions under the Tort Claims Act." 337 U.S. at 53. In examining the issue of offset in fixing tort awards, the Court clearly indicated that the Government should not be required to "pay twice" for the same injury and that " certain elements of tort damages may be equivalent of elements taken into account in providing disability payments." Id. at 53-54. However, in doing so, it explicitly left open the issue of which "elements" of damages are subject to offset in determining an award under the FTCA. The Supreme Court again examined the offset issue in United States v. Brown, 348 U.S. 110, 113 (1954), adhering to its holding in Brooks that "receipt of disability payments under the Veterans Act ... did not preclude recovery under the Tort Claims Act but only reduced the amount of any judgment under the latter Act." Again, the Court in Brown did not address the issue of the elements of the FTCA award. Significantly, the Court's decisions in both Brooks and Brown occurred prior to the passage of Pub.L. No. 87-825. They dealt only with offset against an FTCA award and did not address offset of benefits to recover the amount of a tort award, a procedure which did not exist at the time. In Kubrick v. United States, 444 U.S. 111 (1979), the Supreme Court referenced the section 351 offset provision, stating in a footnote that, " u nder 38 U.S.C. § 351, the benefits payments must be set off against the damages awarded in tort; and the increment in future monthly benefits is not paid until the aggregate amount of the benefits withheld equals the damages awarded." 444 U.S. at 116 n. 5. This passing reference to section 351 is consistent with our view that the full amount of the damages awarded to an individual is to be offset.

6. Consistent with Brooks and Brown, lower courts have since upheld offset of VA benefits against economic damages recovered under the FTCA. E.g., Mosley v. United States, 538 F.2d. 555, 561 (4th Cir.1976); Johnson v. United States, 271 F.Supp. 205, 211 (W.D.Ark.1967); Schwartz v. United States, 230 F.Supp. 536 (E.D.Pa.1964). These decisions lend some support by implication to the proposition that noneconomic damages are not subject to offset by the value of a VA benefit award in determining tort damages. The district court in Christopher v. United States, 237 F.Supp. 787, 799 (E.D.Pa.1965), was more explicit in stating that offset

against a pain and suffering award for the amount of VA benefits to be received is inappropriate. FN2 However, as with the Supreme Court decisions cited above, these cases dealt only with determination of damages under the FTCA and did not address the issue of offset under 38 U.S.C. § 351.

7. The decisions relating to offset of VA benefits against noneconomic damages awarded under the FTCA are notdispositive of the situation presented here. FN3 This inquiry involves the extent VA may set off amounts recovered under the FTCA against future benefits awarded under 38 U.S.C. § 351. In the situation you present, no direct reduction of monies due the veteran under an FTCA award or settlement would take place. Any offset would be against VA benefits under the authority of section 351 and would be contingent upon the veteran's continued eligibility for such benefits. Section 351 makes no distinction between economic and noneconomic damages and accordingly the total amount of tort damages deemed by VA to constitute double recovery from the Government FN4 would be subject to offset against section 351 benefits.

8. We have not previously issued a precedent opinion on whether noneconomic damages are to be offset under 38 U.S.C. § 351. However, in Digested Opinion, 1-13-86 (8-18 Off-Set), the General Counsel dismissed the economic/noneconomic distinction advanced in Christopher, stating:

T he court in Christopher failed to recognize that section 351 simply does not authorize such a distinction with respect to amounts subject to offset. Thus, while the two awards may be different in nature, we believe the distinction is devoid of legal meaning in the absence of statutory authority recognizing such a difference.

Although not precedential, this opinion highlights the absence of authority in section 351 for a distinction between economic and noneconomic damages.

9. We also discussed the offset provision, as it relates to current case law, in O.G.C.Prec. 79-90. FN5 Following a detailed review of the legislative history of section 351, we stated:

Thus, we conclude that the offset provision of section 351 was intended to assure that the same individual does not recover twice for the same disability or death. We consider this clear indication of congressional purpose controlling over inconsistent judicial pronouncements on the subject.

We continue to believe that the clear evidence of congressional intent to prohibit dual recovery, as provided in the terms 38 U.S.C. § 351 and in the

legislative history of that statute, must control over the inconclusive judicial opinions relating to FTCA awards.

HELD:

Section 351 of title 38, United States Code, provides that where an individual is awarded a judgment against the United States or enters into a settlement or compromise under the Federal Tort Claims Act (FTCA) by reason of disability, aggravation, or death treated pursuant to section 351 as if it were service- connected for purposes of compensation paid by the Department of Veterans Affairs (VA), then no such benefits shall be paid to such individual by VA until the aggregate amount of benefits which would have been paid equals the total amount included in such award. Offset against VA benefits of both economic (loss of earning capacity) and noneconomic (e.g., pain and suffering) elements of damage recoveries under the FTCA, 28 U.S.C. §§ 2671-2680, is consistent with the terms of section 351 and its stated purpose. Accordingly, the full amount of damages recovered by an individual under the FTCA is subject to offset against benefits payable to that individual under section 351, regardless of whether those damages compensate for economic or noneconomic loss.

1 No Footnote

2 As indicated by the directory language of section 351, the suggestion in Christopher that section 351 offset is discretionary is clearly wrong. We also note that, in Ulrich v. United States, 853 F.2d 1078, 1082-83 (2nd Cir.1988), the Second Circuit recognized a distinction between the offset of 351 benefits against an FTCA award and the offset against such an award of benefits payable as special monthly compensation under 38 U.S.C. § 314, holding "unlike s 351 benefits, there is no statutory authority for setting off § 314 benefits against plaintiff's pain and suffering award." Apparently, the court as operating under the assumption that statutory authority is necessary in order for a credit for VA benefits to be allowed in setting a tort award, an assumption inconsistent with the Supreme Court's decision in Brooks.

3 Likewise, Greenwood v. United States, 858 F.2d 1056, 1057 (5th Cir. 1988), is not controlling, as the issue of offset of noneconomic damages against section 351 benefits was not before the court and the holding simply authorized VA to pursue its remedies under the provisions of section 410(b) (which is now codified at 38 U.S.C. § 418).

4 We have previously recognized a distinction between "double payment"

and "double recovery." See O.G.C.Prec. 79-90, discussed infra, paragraph 9.

5 In O.G.C.Prec. 79-90, we recognized that the nature of tort damages may be relevant for the limited purpose of determining the legal status in which the recipient of a tort award received the damages. This determination was found necessary in light of the need under section 351 to determine whether the damages compensated for harm suffered by the individual whose benefits may be subject to offset, as only such damages could be offset from that individual's benefits under the statute.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 52-91

FOR RELEASE ON DELIVERY
Expected at 10:00 A.M. EST
April 29, 2004

STATEMENT OF
HONORABLE KENNETH B. KRAMER, CHIEF JUDGE
U.S. COURT OF APPEALS FOR VETERANS CLAIMS
FOR SUBMISSION TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
APRIL 29, 2004

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

On behalf of the United States Court of Appeals for Veterans Claims (the Court), I appreciate the opportunity to testify concerning H.R. 3936. I speak in support of the bill. H.R. 3936 would amend title 38 of the United States Code to authorize the Court to locate its principal office in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and would express the sense of Congress that a dedicated Veterans Courthouse and Justice Center (Courthouse) should be provided for the Court and those it serves. The proposed legislation would also require the Secretary of Defense, the Secretary of Veterans Affairs, the Administrator of General Services, and other appropriate government officials to work with the Court to explore the feasibility of using a site owned by the United States and located on or proximate to the Pentagon Reservation. A report to the Congress on this matter would be due 90 days after enactment of the legislation.

The Court is an independent Article I judicial tribunal created by statute in 1988 to hear appeals from adverse final decisions of the Board of Veterans' Appeals concerning benefits administered by the Department of Veterans Affairs (VA). By creating the Court, Congress gave our nation's veterans, for the first time, the right to judicial review of VA benefits decisions. The Court, housed since its founding in a commercial office building in the District of Columbia, is presently the only Article I court not located in a dedicated courthouse (the other Article I courts are the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Federal Claims).

Last October, I wrote to DoD Secretary Rumsfeld to ask for his support for the construction on presently available Pentagon Reservation land of a Courthouse that would become the permanent home for the Court. It was my understanding that the Department of Defense (DoD) had initiated a feasibility study to determine the "highest and best possible use" of three sites in Arlington, Virginia: the Hayes, Eads, and Fern Street parking lots, located on the Pentagon Reservation, south of Interstate 395, just north of Army Navy Drive; and that, after the study had been completed, the DoD might use its enhanced-leasing authority to request proposals for private development. I asked Secretary Rumsfeld to consider using this enhanced-leasing authority to construct the Courthouse on one of these sites.

In addition to the Court, occupants of the Courthouse would be members of those entities that regularly practice before the Court -- VA General Counsel Group VII, the Veterans Consortium Pro Bono Program, and appellate attorneys of the Disabled American Veterans (DAV), the Paralyzed Veterans of America (PVA), and the National Veterans Legal Services Program (NVLSP), as well as the executive office of the U.S. Court of Appeals for Veterans Claims Bar Association (CAVC Bar Association). The Veterans Consortium Pro Bono Program is a federally funded grant program, administered through the Legal Services Corporation, to recruit, train, and mentor attorneys to provide pro bono representation to veterans and their families in cases before the Court. The DAV and PVA are veterans service organizations that have historically had staff members housed at Department of Veterans Affairs (VA) facilities where they represent veterans benefits claimants. The NVLSP is a public-interest program devoted to representing veterans and their families. The CAVC Bar Association is a tax-exempt voluntary organization of practitioners before the Court that qualifies to receive grants of funds for, e.g., educational programs, pursuant to 38 U.S.C. § 7285(b)(2). We are asking other veterans organizations about their interest in having their legal offices in the Courthouse.

The General Services Administration (GSA) has preliminarily estimated that an appropriate Courthouse would require 121,000 gross square feet or 112,000 rentable square feet of interior space. (It is not anticipated that, if additional veterans organizations were to occupy space, there would be any significant impact on square-footage requirements.) GSA can work with DoD on predesign and preconstruction studies to determine the feasibility of use of one of the DoD sites for the Courthouse, can provide input during design and construction based on guidelines for federal courthouses, and, once construction was completed, act as the federal leasing agent. The Court and its constituencies that have expressed an intent to relocate in the Courthouse pay (or have expressed a willingness to pay, based upon present rental costs) over $3.7 million per year for rent. GSA anticipates that, at least for the Court and VA, rental costs at our present D.C. location will increase substantially in the near future.

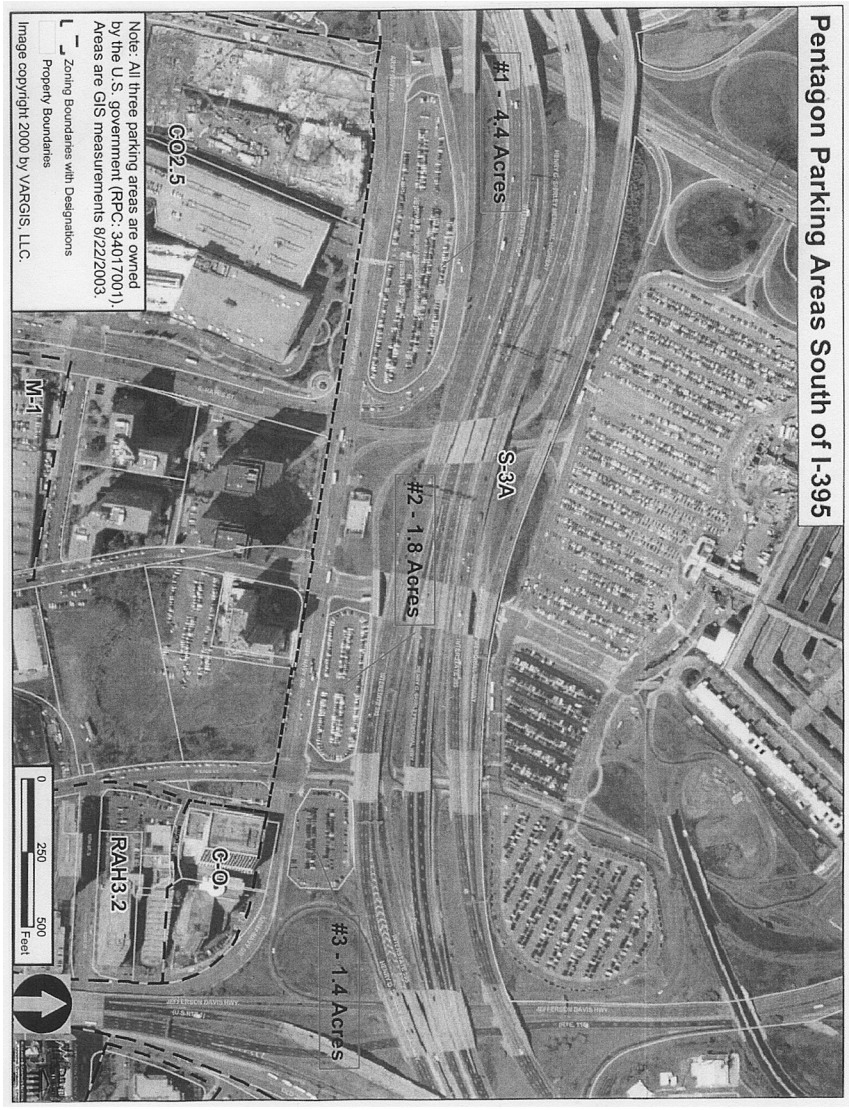
In December 2003, I received a response to my letter to Secretary Rumsfeld. The response came from the Honorable Raymond F. DuBois, the DoD Deputy Under Secretary for Installations and the Environment. In his letter, Mr. DuBois stated that a feasibility study had been initiated to "gauge the level of private sector interest in entering into an 'Enhanced-Use Lease' agreement in accordance with the provisions of Section 2667 of Title 10, United States Code." He pointed out that requirements for use of the land include DoD's anti-terrorism and force-protection needs"; specifically, he listed "maintaining the present level of employee parking, the possible relocation of the Navy Exchange Service Station (which sits on land that will be transferred to the Secretary of the Army for use by Arlington National Cemetery), compliance with line-of-site [sic] restrictions, and effecting other critical structural security and design features." He went on to say the following: "Should 'Enhanced-Use-Leasing' prove feasible, we would not object to the [GSA] working with our selected developer to see if your requirement for a new United States Veterans Courthouse and Justice Center could be met within this context."

GSA has been supportive, with members of the National Capital Region staff providing assistance and preliminary analysis. In a December 2003 letter, Administrator Stephen A. Perry wrote as follows, concerning the initiative to locate the Courthouse on or near the Pentagon Reservation: "We share your vision for this worthy undertaking, and we will continue to support you on this or any other alternatives you may consider." Arlington County government officials have indicated that they support the Courthouse and have offered to assist in this project.

I continue to follow the progress of the DoD feasibility study, and have been informed that it is not yet final, but should be complete within the next few weeks. Should the study be positive concerning enhanced-lease development by the private sector, the Court would work with DoD, the developer it selects, GSA, and the constituents who intend to co-locate with the Court to try to make the Veterans Courthouse and Justice Center a reality.

Given the past, present, and future sacrifices of the many men and women of our Armed Forces, I cannot imagine a higher or better use for one of these present parking-lot sites than a stand-alone, dedicated Veterans Courthouse and Justice Center to embody the gratitude that this nation holds for those who -- in Abraham Lincoln's words -- "shall have borne the battle and for his widow and his orphan." The Pentagon Reservation site would be the ideal setting, given its proximity to the Pentagon, Arlington Cemetery, and the soon-to-be-constructed Air Force Memorial. The Courthouse would express our government's strong commitment to the ideal of justice for veterans and DoD's use of its enhanced-leasing authority would permit the project to come to fruition with a minimum expenditure of appropriated funds. We would, of course, be glad to cooperate in the preparation of the report called for by section 2(c) of H.R. 3936.

In closing, I want to express my gratitude for the support of the sponsors of this legislation, Chairman Smith, ranking minority member Evans, and Armed Services Committee ranking minority member Skelton and for the invaluable assistance of your Committees staff, especially Pat Ryan, Kingston Smith, and Mary Ellen McCarthy. I thank you for your consideration of H.R. 3936, which would greatly advance this undertaking, as a timely and tangible symbol of justice for our nation's veterans and their families whose sacrifices are greatly valued.


Pentagon Parking Areas South of I-395
#1 - 4.4 Acres
S-3A
#2 - 1.8 Acres
#3 - 1.4 Acres
C-O-2.5
C-O.
RA H-3.2
M-1
0
250
500
Feet
Note: All three parking areas are owned by the U.S. government (RPC: 34017001). Areas are GIS measurements 8/22/2003.
Zoning Boundaries with Designations
Property Boundaries
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STATEMENT OF THE HONORABLE KEN CALVERT
Member of Congress
U.S. House of Representatives

Before the Subcommittee on Benefits of the
House Veteran's Affairs Committee
on
H.R. 2206, Prisoner of War/Missing in Action National Memorial Act

April 29, 2004

I want to thank the Chairman and the Subcommittee for giving me the opportunity to speak in support of my legislation H.R. 2206, the Prisoner of War/Missing in Action National Memorial Act of 2003.

Introduced on May 22, 2003, H.R. 2206 would designate the Prisoner of War/Missing in Action Memorial presently being built at Riverside National Cemetery in Riverside, California as *the National POW/MIA Memorial.*

Currently, no National memorial exists to honor both prisoners of war and those missing in action, nor is there a designated POW/MIA statue. Andersonville National Historic Site in Andersonville, GA, in fact, is the only park in the National Park System to serve as a memorial specifically for American prisoners of war throughout the nation's history...but does not include recognition of those missing in action. Congress stated in the authorizing legislation that this park's purpose is "to provide an understanding of the overall prisoner of war story of the Civil War, to interpret the role of prisoner of war camps in history, to commemorate the sacrifice of Americans who lost their lives in such camps, and to preserve the monuments located within the site". In 1998 a Museum was dedicated at Andersonville for men and women of this country who have suffered captivity.

The POW/MIA Memorial at the Riverside National Cemetery would stand to fulfill the existing need by our Nation for Monuments and Memorials that pays respect to all our Armed Services' Veterans by:

1. Recognizing and honoring all Veterans who, in service to this Nation, sacrificed their physical and mental well-being as Prisoners of War AND recognize the plight of more than 89,000 Veterans who did not return home -- our MIAs;

2. Creating accessibility to the millions of Americans living west of the Mississippi to visit a National Memorial and Monument in honor of the men and women of the Armed

Services, specifically for POWs and MIAs. (Presently, most National Memorials and Monuments lie east of the Mississippi); and,

3. Continuing the Riverside National Cemetery's effort to memorialize our nation's veterans at National Cemeteries throughout the country through the incorporation of the memorial park concept.

Moreover, the Riverside National Cemetery provides the IDEAL location for this National Memorial given its status as the second largest resting place, in our national cemetery system, with 125,000 men and women of our armed forces standing silent vigil. In fact, in less than five short years, it is expected to be the largest cemetery in the national system. And in six decades it will have more than 1.4 million honored veterans, making Riverside National Cemetery larger than the Arlington National Cemetery – the most widely recognized. What better place to have a national memorial...a National Shrine in honor of American POWs and MIAs.

The POW/MIA Memorial would depict a one and one-half scale life size sculpture of a Prisoner of War on his knees with his arms pinned behind his back by a bamboo/wooden rod and his head defiantly lifted towards heaven (He has not lost hope...he is not defeated). The statue is surrounded by columns of black granite and rests a few yards from the black and white flag, the National Symbol of the POW/MIA cause. It was sculpted by a renowned California artist Lewis Lee Millet Jr., son of Congressional Medal of Honor recipient Colonel Lewis Millett Senior USA (Ret.). The design has received approval from the National Cemetery Administration, Department of Veterans Affairs.

Finally, at the Riverside National Cemetery the POW/MIA National Memorial would proudly join the National Medal of Honor Memorial (CMOH) at the Riverside National Cemetery, and like the CMOH Memorial will be paid for and maintained by private dollars. For this reason the Congressional Budget Offices has given H.R. 2206 a score of zero, zero cost to the American taxpayer, making both Memorials true representations of the people and by the people of the United States of America. Clearly, this project's funding shows that it has been given the stamp of approval by the American public, including our American Veterans and their families. Additionally, H.R. 2206 legislation has received wide support from Veterans organizations, including the Veterans of Foreign Wars.

Thank you once again Chairman and the whole Subcommittee on Veterans Benefits for letting me speak on behalf of my legislation H.R. 2206, the Prisoner of War/Missing in Action National Memorial Act. I look forward working with you all in seeing that H.R. 2206 becomes law giving our American Prisoners of War and those Missing in Action the long overdue National Memorial they deserve.

Riverside National Cemetery Support Committee
22495 Van Buren Blvd. • Riverside, CA 92518 • (909) 653-8417

April 12, 2004

Congressman Ken Calvert
Attn: Maria Bowie
2201 Rayburn Building
Washington, D.C. 20515

Dear Maria,

I am writing to offer the endorsement of the Governing Board of Directors of the Riverside National Cemetery Support Committee for legislation that would designate the Memorial at Riverside National Cemetery as the National POW - MIA Memorial site.

This POW - MIA Memorial would stand to honor those Veterans who...in service to this Nation, sacrificed their physical and mental well being as Prisoners of War and recognize the plight of more than 88,000 Veterans who did not return home...our MIA's! This Memorial will also be the voice to the future...awakening an awareness that today a proud Veteran stood their post and provided future generations the opportunity to live under the precious umbrella of freedom.

The 1-1/2 scale life size sculpture depicts a Prisoner of War on his knees with his arms pinned behind his back by a bamboo/wooden rod and his head defiantly lifted towards heaven. (He has not lost hope...he is not defeated) The statue is surrounded by columns of black granite and rests a few yards from the black and white flag...the National Symbol of the POW - MIA cause. (the same POW - MIA flag proudly displayed in the rotunda of the United States Capital)

"THEY ARE NOT FORGOTTEN"

Thank you for standing with us as we honor our Veterans...the Men and Women who are the great defenders of our freedom.

With kindest regards,

Paul Adkins
Chairman

The all Volunteer Riverside National Cemetery Support Committee is a 501(c)(3) nonprofit corporation; TAX ID #33-0722700

Established in 1978

VETERANS OF FOREIGN WARS

OF THE UNITED STATES

April 7, 2004

APR 16 2004

The Honorable Ken Calvert
2201 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Calvert:

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States and our Ladies Auxiliary, I would like to thank you and offer our support for HR 2206, legislation which would designate a *Prisoner of War/Missing in Action National Memorial at Riverside National Cemetery in Riverside, California.*

The VFW has long been a leader in helping to locate the remains of members of our Armed Forces who have been missing in action since the Korean and Vietnam Wars. A memorial to honor all former prisoners of war and those members whoa are listed as missing in action as well as those who remain unaccounted for is long overdue.

It is only fitting and proper that a national memorial is dedicated to the bravery of those members who have sacrificed and served our national honorably - some never to return home. We applaud your efforts to offer a memorial in their names.

We look forward to working with you and your staff on this legislation. As always, thank you for your continued support of America's veterans.

Sincerely,

Dennis Cullinan, Director
National Legislative Service

DC:tpm

VFW MEMORIAL BUILDING ● 200 MARYLAND AVENUE, N.E. ● WASHINGTON, D.C. 20002-5799
AREA CODE 202-543-2239 ● FAX 202-543-6719

DEC 0 2 2003

NATIONAL ASSOCIATION of COUNTY VETERANS SERVICE OFFICERS

2200 Wilson Blvd., Suite 102, #530
Arlington, VA 22201-3324

November 25, 2003

Congressman Ken Calvert
2201 Rayburn Building
Washington D.C. 20515

Dear Congressman Calvert,

On behalf of the National Association of County Veterans Service Officers (NACVSO), I would like to thank and commend you on your efforts in support of our nation's veterans and your support for suitable memorials for our nation's heroes. Your sponsoring of recent legislation, specifically, HR 2206 will go a long ways to help preserve the memory of those who deserve that recognition so much.

NACVSO fully supports HR 2206 which would designate a Prisoner of War/Missing in Action National Memorial at Riverside National Cemetery in Riverside, California. We believe this is a fitting memorial and a proper location for honoring men and women who have paid a high cost for our freedoms.

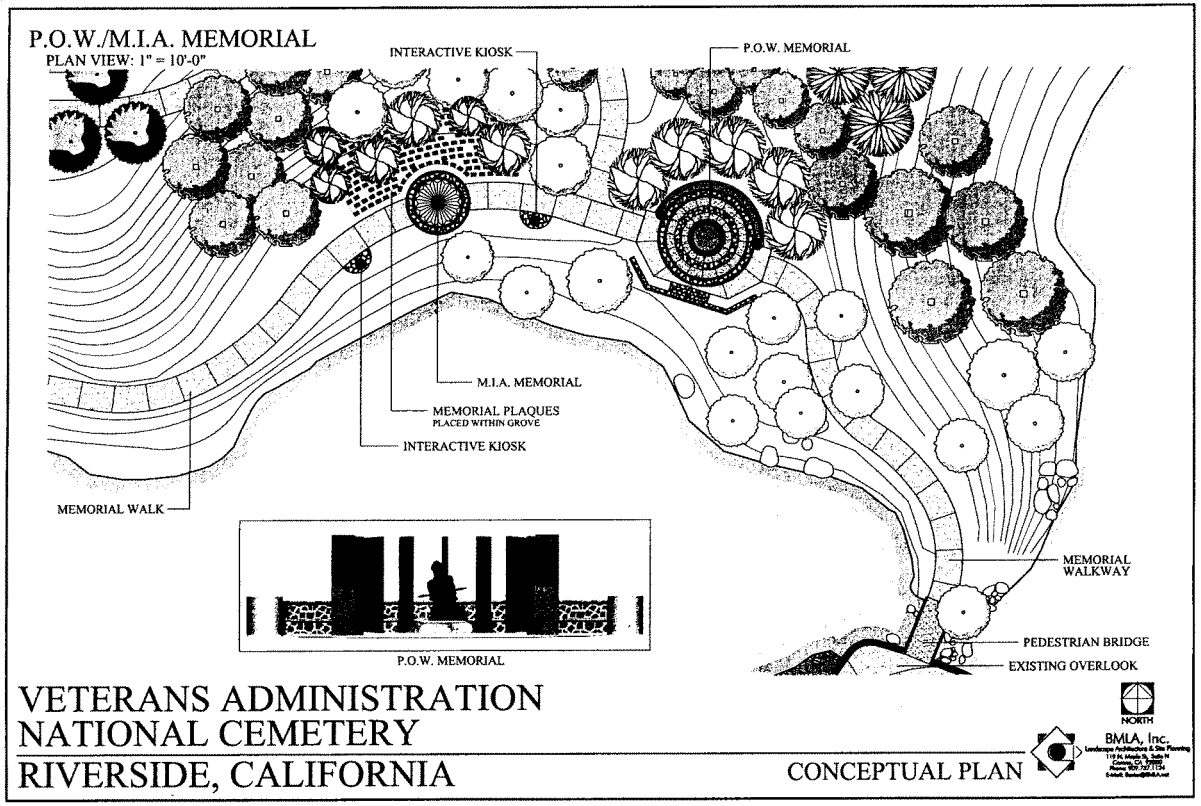
Thank you for all of your work on behalf of our nation's veterans. Your efforts do not go unnoticed.

Sincerely,

Michael D. Murphy
Legislative Chairman

Los Angeles Times
CALIFO
INLAND EMPIRE EDITION
Wednesday, November 12, 2003

FLORAL TRIBUTE: [illegible] in Riverside places a [illegible]


P.O.W./M.I.A. MEMORIAL
PLAN VIEW: 1" = 10'-0"
INTERACTIVE KIOSK
P.O.W. MEMORIAL
M.I.A. MEMORIAL
MEMORIAL PLAQUES
PLACED WITHIN GROVE
INTERACTIVE KIOSK
MEMORIAL WALK
MEMORIAL
WALKWAY
PEDESTRIAN BRIDGE
EXISTING OVERLOOK
P.O.W. MEMORIAL
VETERANS ADMINISTRATION
NATIONAL CEMETERY
RIVERSIDE, CALIFORNIA
CONCEPTUAL PLAN
NORTH
BMLA, Inc.

American Gold Star Mothers, Inc.

NATIONAL PRESIDENT

ORGANIZED JUNE 4, 1928
INCORPORATED JANUARY 5, 1929
CHARTERED BY CONGRESS - JUNE 12, 1984
FOUNDED BY GRACE DARLING SEIBOLD

TELEPHONE 202 – 265-0991
NATIONAL HEADQUARTERS
2128 LEROY PLACE, N.W.
WASHINGTON, D.C. 20008-1893

Riverside National Cemetery Support Committee
Attn: POW/MIA Memorial Project
Paul Adkins
22495 Van Buren Blvd.
Riverside, California 92518

Subject: National Prisoner of War "POW" - Missing in Action "MIA" Memorial Project to be constructed in 2004 at Riverside National Cemetery, Riverside, California.

To Whom it May Concern:

As the National President of the American Gold Star Mothers,Inc. (Mothers who have lost sons or daughters in wars or other military related conflicts). I am acutely aware of the sorrow, pain and lingering anxiety in the effort to identify and return POWs and MIA, dead or hopefully alive.

I speak for all Gold Star families when I tell you that we have to deal with the finality of our children coming home in wooden boxes to be laid to rest in the place of our choice...that is the end, the climax of the joy, hope, and love which we shared with that child. We know they are gone from us... never to return. However, the uncertainty of not knowing what happened is incomprehensible...and in many cases, never knowing what happened...are they over there in some strange land suffering, lonely, starving, being used as slave labor, being tortured? Or is their body, or the remains of our loved one laying some place unknown... unfound... in a jungle, a desert, or mountain range, under the wreckage of an airplane? Are they being held for compensation from our government?

Yes, we know about the POW/MIA issues. I personally know Three mothers,

One on my executive board whose son has been missing since 1972, downed in a Helicopter Recon Mission...Remains Not Recovered. Pauline Yeakley states, "all we have is a piece of paper", No Answer, No Resolution.

Pat Butcher, Past National Officer from New York, grieves over her son, Kenneth, who as a U.S. Navy Seal who went down in Grenada 1983...Lost at sea...Remains Not Recovered... No Answer... No Resolution.

Virginia Hempel, Past National Officer from California Who recently viewed a picture of her son, Barrys' Memorial Headstone which was placed in Arlington National Cemetery After 36 years of waiting to hear what happened to her MIA Son. Other Gold Star Mothers were with Virginia when she saw the picture and wept.

My son, Rex Marcel Sherman, was KIA on 10 November 19 1969. He was 18 year old . Rex is buried in Arlington National Cemetery. I thank God everyday that he was not captured, missing or held as a Prisoner of War.

We need more POW/MIA Memorials as a reminder to continue to Fight the Fight for the return of the remains found....to pursue the search, investigation and identification of those left behind until everyone who has a loved one in a far away country can bring them home and find peace.

Thank you for the opportunity to express myself on this worthwhile issue.

Sincerely,

Ann Y. Sherman Wolcott

Ann Y Sherman Wolcott
National President
American Gold Star Mothers, Inc.
1792 Westwood Road
York Pa 17403-4620
717 845-2327

Unchained Eagle Memorial and Benevolent Society, Inc.
41-805 Ward Drive
Palm Desert, CA 92211-8965

March 5, 2004

Riverside National Cemetery Support Committee
Attn: POW/MIA Memorial Project
Paul Adkins
22495 Van Buren Blvd.
Riverside CA 92518

Dear Friends:

I am writing to add my endorsement, and the endorsement of this organization to the construction of the proposed POW/MIA Memorial at the Riverside National Cemetery.

As a former POW of the Vietnam War, I am intimately familiar with this project and believe it to be a fitting memorial to all of us who upheld our nation's honor in the prisons of our enemies, as well as those men and women of our country whose fate is known but to God alone.

Because of the vastness of the United States, many people on the west side can never travel to Andersonville, Georgia, to Washington, DC, or to any one of the other monuments dedicated to the men and women of our country who ventured much for the liberties we now enjoy. The work of the RNC and its Support Committee to provide the western US with a fitting and hallowed place to learn about our heritage and to honor our heroes is laudable. This proposed memorial will add a truly sacred spot to an already hallowed resting place.

In our nation's service,

Robert G. Certain
Chaplain, Colonel, USAFR (ret)
President

Office: (760) 837-3574 Fax: (760) 837-3584 www.UnchainedEagle.com

STATEMENT OF

ROBERT J. EPLEY

ASSOCIATE DEPUTY UNDER SECRETARY FOR

POLICY AND PROGRAM MANAGEMENT

VETERANS BENEFITS ADMINISTRATION

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON BENEFITS

HOUSE COMMITTEE ON VETERANS' AFFAIRS

APRIL 29, 2004

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify today and present the views of the Department of Veterans Affairs on several bills of great interest to our Nation's veterans.

MAXIMUM HOME LOAN GUARANTY

Mr. Chairman, you requested our views on two bills, H.R. 1735 and H.R. 4065, which would increase the maximum VA housing loan guaranty.

The first bill, H.R. 1735, would increase the maximum guaranty from $60,000 to $81,000. The other bill, H.R. 4065, would index the maximum

guaranty to 22.5 percent of the Federal Home Loan Mortgage Corporation (also known as "Freddie Mac") single family conforming loan limit.

Neither the law nor regulations set a maximum principal amount for a VA guaranteed home loan, so long as the total loan amount does not exceed the reasonable value of the property securing the loan, and the veteran's present and anticipated income is sufficient to afford the loan payments. As a practical matter, Mr. Chairman, requirements set by secondary market institutions limit the maximum VA loan to four times the guaranty. The current maximum guaranty of $60,000 effectively limits VA housing loans to $240,000.

Increasing the maximum guaranty to $81,000, as proposed by H.R. 1735, would have the effect of increasing the maximum amount lenders are willing to finance to $324,000. If the guaranty were indexed as proposed by H.R. 4065, the VA guaranty would increase to $75,082.50, which is 22.5 percent of the current Freddie Mac conforming loan limit of $333,700. That would increase the effective VA loan limit to $300,330. Thereafter, the VA guaranty would be automatically adjusted annually in tandem with the Freddie Mac loan limit.

VA estimates enactment of H.R. 4065 would produce a loan-subsidy savings to the Veterans Housing Benefit Program Fund of approximately $20.5 million in FY 2005, and a 10-year savings of approximately $71.3 million. Enactment of H.R. 1735 would produce loan-subsidy savings of approximately $22.7 million in FY 2005, and a 10-year savings of approximately $82.6 million.

VA is currently reviewing the results of an independent program evaluation of the VA Home Loan program. The maximum home loan guaranty was an element of this evaluation. We support the concept but reserve our opinion on these two bills until we can complete our analysis of the contractor's final report.

H.R. 348

You also requested our views, Mr. Chairman, on H.R. 348, the "Prisoner of War Benefits Act of 2003."

Section 2(a) and (b) of H.R. 348 would eliminate the requirement that a former prisoner of war (POW) be detained or interned for at least thirty days in order to be eligible for a presumption of service connection for certain diseases and at least ninety days in order to be eligible to receive VA care and treatment for a dental condition or disability. Congress dealt with the issues covered by subsections 2(a) and (b) during the First Session of the 108th Congress. Section 201 of the Veterans Benefits Act of 2003, Public Law 108-183, eliminated the thirty-day detention requirement in order for a former POW to be eligible for a presumption of service connection for psychosis, any of the anxiety states, dysthymic disorder (or depressive neurosis), organic residuals of frostbite, and post-traumatic osteoarthritis. Section 101 of the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003, Public Law 108-170, eliminated the ninety-day detention requirement in order for a former POW to be eligible for VA care and treatment for a dental condition or disability.

Section 2(c) of H.R. 348 would add heart disease, stroke, liver disease, type 2 diabetes, and osteoporosis to the list of diseases for which a presumption of service connection is available pursuant to 38 U.S.C. § 1112(b). Section 2(c) would also authorize the Secretary to promulgate regulations creating a presumption of service connection for any other disease which the Secretary determines has a "positive association with the experience of being a [POW]." A "positive association" would exist "if the credible evidence for the association is equal to or outweighs the credible evidence against the association." In deciding whether to promulgate such a regulation, the Secretary would be required to consider the recommendations of the Advisory Committee on Former POWs and any other available sound medical and scientific information and analyses. VA

would have sixty days from receipt of an Advisory Committee recommendation to make a determination as to whether a presumption of service connection is warranted, and then another sixty days to publish in the Federal Register either proposed regulations, if VA determines that a presumption is warranted, or a notice explaining the scientific basis for a determination that a presumption is not warranted.

VA strongly supports enactment of section 2(c) of H.R. 348, provided that the Congress can find offsetting savings. No one can reasonably doubt that the stresses and privations endured by prisoners of war take heavy tolls on their health in ways that may never be fully understood. The majority of former POWs are aging veterans of World War II who are unable to wait for science to provide definitive answers. Moreover, former POWs as a group do not benefit from relatively relaxed statutory standards — such as the positive-association standard applied in the case of all Vietnam veterans because of their potential for exposure to defoliants used there — for weighing the scientific evidence regarding associations between their service experience and later occurring diseases. There is some scientific evidence suggesting an association between the POW experience and each of the illnesses covered by the bill, and because these veterans are particularly deserving of special consideration they too should be accorded the benefit of the doubt.

VA is also working administratively to address the needs of former POWs for full and fair compensation. In December 2003 the Secretary tasked a work group of Veterans Health Administration, Veterans Benefits Administration and Office of General Counsel officials to 1) develop a methodology for the fair and balanced assessment of medical conditions associated with detention as a POW, and 2) recommend to him any conditions that, when this methodology is applied, warrant designation as presumptively service connected.

The work group has met several times and will shortly be recommending to the Secretary a proposed methodology for consideration of additional diseases. In developing its recommendations, the group has been mindful of the standards Congress has adopted for application in other contexts; i.e., for herbicide-exposed Vietnam veterans and veterans of the Gulf War. We pledge to work through these difficult issues as quickly as possible and to keep this Committee informed of our progress.

We estimate that enactment of section 2(a) and (c) of H.R. 348 would have mandatory costs of $33.8 million in fiscal year 2005 and a 10-year cost of $588.8 million.

H.R. 843

H.R. 843, the "Injured Veterans Benefits Eligibility Act of 2003," would amend 38 U.S.C. § 1151 to provide that a qualifying additional disability or qualifying death shall be considered a service-connected disability or death for purposes of all laws administered by VA. If enacted, the bill would create eligibility for each of VA's many service-connected benefit programs for veterans with non-service-connected injuries incurred as a result of VA training, hospitalization, or medical treatment. Thus, under the bill, section 1151 beneficiaries would attain the same benefit status as veterans who were disabled or died in line of duty during their military service.

The current law places veterans who suffer injuries caused by VA in the same position, for the purposes of monthly disability compensation, dependency and indemnity compensation, and certain other benefits (for example, Specially Adapted Housing) only, as they would be in if the disability or death actually resulted from their military service. At the same time, however, the Federal Tort Claims Act provides these injured veterans a tort remedy against the government for injuries incurred as a result of the negligence of a federal employee. Under

the Act, a claimant who establishes negligence by the government is entitled to receive damages as authorized by the law of the State in which the tort occurred, except for punitive damages or interest prior to judgment. Current law provides that no benefits shall be paid under section 1151 to any individual who receives a tort judgment against the government or who settles a tort claim against the government until the aggregate amount of the compensation that would be paid under section 1151 equals the total amount of the tort award.

H.R. 843 would create eligibility for section 1151 beneficiaries under various title 38 benefit programs, including hospital, nursing home, and outpatient care; service-disabled veterans' insurance; burial benefits for death from service-connected disability; survivors' and dependents' educational assistance; and automobiles and adaptive equipment. Each of these benefits might correspond to an element of the damages constituting a tort award against the government under the Federal Tort Claims Act. Therefore, the bill might create an anomalous dual remedy for veterans with non-service-connected disabilities that is more advantageous than the remedy provided for veterans injured during their military service. For example, compensatory tort damages awarded to a veteran in a judgment against the government might include the value of a specially adapted automobile. Under the bill, that veteran could simply wait until he has satisfied the tort offset provisions to file an initial claim for VA automobile benefits under chapter 39 of title 38, United States Code. The veteran would receive government assistance in the purchase of an automobile twice, initially through the tort award and later under VA's program. Meanwhile, a veteran with similar injuries incurred in service would be entitled only to the benefits provided under VA's program.

VA estimates that enactment of H.R. 843 would result in benefit costs of approximately $755 thousand for Fiscal Year 2005 and $3.9 million over ten years. We cannot, however, estimate the costs of hospital, nursing home, outpatient and domiciliary care that would result from enactment of H.R. 843.

The universe of potential beneficiaries under the bill would not be large because only 2,491 persons are currently receiving compensation or dependency and indemnity compensation under section 1151. Nevertheless, given the panoply of damages available to claimants under the Federal Tort Claims Act, we do not believe it is necessary to provide section 1151 beneficiaries with additional benefits equal to or in excess of those designed to fulfill in some measure the high obligation the government owes to those who were disabled or died as a result of their service to our Nation.

Therefore, we do not support enactment of H.R. 843.

H.R. 2206

H.R. 2206 is also known as the "Prisoner of War/Missing in Action National Memorial Act." Section 2(b) of this bill would designate the memorial to former POWs and members of the Armed Forces listed as missing in action to be constructed at the Riverside National Cemetery in Riverside, California, as the Prisoners of War/Missing in Action National Memorial. Section 2(c) of the bill would prescribe that the memorial is not a unit of the National Park System and that the designation of the national memorial shall not be construed to require or permit Federal funds, other than any funds provided for as of the date of enactment of the bill, to be expended for any purpose related to the national memorial.

The memorial will be comprised of a circular plaza located on the east side of the upper lake just inside the entrance to the national cemetery. The centerpiece of the memorial will be a figurative bronze statue of a Vietnam POW. Black granite panels standing on end will be placed to the rear of the circular plaza. The names of all known POW sites, including the total number of prisoners at each location, will be engraved on these panels. The POW sites will be displayed by major conflict or campaign.

The Riverside National Cemetery Memorials and Monuments Commission (RNCMMC) is a private organization that has proposed to erect the memorial and donate it to the National Cemetery Administration (NCA). The Commission is responsible for funding and contracting issues related to this project. The RNCMMC is currently raising funds for the construction and future maintenance of the memorial through donations. The statue for the memorial is finished and is ready for installation once the plaza is completed. NCA approved plans for the project in March 2004 and designated a location for the memorial within cemetery grounds. The RNCMMC anticipates that construction of the plaza will commence this summer and plans to dedicate the memorial six months after construction begins.

The National Park Service (NPS) currently maintains and operates the National POW Museum located at the Andersonville National Historic Site in the State of Georgia. In 1970, Congress authorized the establishment of the Andersonville National Historic Site pursuant to Public Law 91-465, 84 Stat. 989, in order to "provide an understanding of the overall prisoner-of-war story of the Civil War, to interpret the role of prisoner-of-war camps in history, to commemorate the sacrifice of Americans who lost their lives in such camps, and to preserve the monuments located therein." The park and the National POW Museum currently serve as a national memorial to all American POWs. Accordingly, we recommend that NPS have an opportunity to comment on this legislation.

We estimate that there would be no costs to VA associated with designation of a national memorial at Riverside National Cemetery. We have no objection to designating the memorial as provided for in section 2(b). However, we are concerned that section 2(c) of the bill would restrict use of Federal funds to maintain the memorial in the event that private funds are not adequate for this purpose. Section 2(c) would apparently preclude VA from expending any

Federal funds for future maintenance of the memorial under any circumstances. Although the RNCMMC is raising funds to cover the future costs to operate and maintain the memorial, should the donating organization become unable to meet the future costs associated with maintenance and repair of the memorial, VA would be prohibited by section 2(c) from using Federal funds to provide such maintenance or repairs.

Without authority to use Federal funds for the care and maintenance of the memorial, we do not support this legislation.

H.R. 2612

The next bill I will discuss, Mr. Chairman, is H.R. 2612. This measure would authorize the Secretary to provide specially adapted housing grants to veterans with permanent and total service-connected disabilities due to the loss or loss of use of both upper extremities such as to preclude use of the arms at and below the elbows.

VA favors enactment of H.R. 2612, provided that the Congress can find offsetting savings.

Under current law, veterans who are entitled to compensation under chapter 11 of title 38, United States Code, for certain permanent and total service-connected disabilities described in section 2101(a) of title 38 are eligible for grants of up to $50,000 to acquire homes which are equipped with special features made necessary by the nature of their disabilities. The qualifying disabilities generally involve either the loss or loss of use of both lower extremities, or the loss or loss of use of one lower extremity together with certain other conditions specified in the statute.

H.R. 2612 would add "the loss, or loss of use, of both upper extremities such as to preclude use of the arms at and below the elbows" as a disability that qualifies for this grant.

Currently, veterans who have lost or lost the use of both hands are eligible for a special housing adaptations grant of up to $10,000. That grant, authorized by section 2101(b) of title 38, United States Code, will pay for the adaptations to veterans' homes which may be necessary by reason of the veterans' disabilities. The grant authorized by section 2101(a) will pay for up to 50 percent of the total cost to the veterans of the adapted homes and necessary land. Veterans who are eligible for the grant under section 2101(a) may not receive a grant under section 2101(b). Therefore, if H.R. 2612 is enacted, veterans who have lost or lost the use of their arms at and below the elbow would qualify for the full $50,000 specially adapted housing grant rather than the more limited $10,000 grant.

VA supports providing the increased benefit for this class of severely-injured veterans.

VA estimates that approximately 12 additional veterans per year would become eligible for the increased grant if H.R. 2612 is enacted. This would produce costs of $480,000 per year, with a 10-year cost of $4.8 million.

H.R. 3936

H.R. 3936, Mr. Chairman, would authorize the Court of Appeals for Veterans Claims to conduct business from any location in the Washington, D.C., metropolitan area instead of being limited to a site strictly within the District of Columbia. The bill would also express the sense of the Congress that the Court be provided a dedicated Veterans Courthouse and Justice Center, preferably at a Federal site in proximity to the Pentagon Reservation.

VA defers to the United States Court of Appeals for Veterans Claims on H.R. 3936.

H.R. 4172

Mr. Chairman, H.R. 4172 would amend title 38 in three respects with regard to benefits for radiation-related disabilities and deaths.

Section 1(a) of H.R. 4172 would add cancer of the bone, brain, colon, lung, and ovary to the list of diseases for which a presumption of service connection is available for a radiation-exposed veteran. VA amended its regulations effective March 26, 2002, by adding these diseases to the list of diseases for which a presumption of service connection is available for veterans who participated in a radiation-risk activity while serving on active duty or as a member of a reserve component while on active duty for training or inactive duty training. VA did so in order to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under the Radiation Exposure Compensation Act (RECA), Public Law 101-426, and the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106-398. Section 1(a) of the bill would merely codify in statute this provision in the current regulations.

Section 1(b) of H.R. 4172 would also codify another provision in existing VA regulations. It would amend the definition of "radiation-risk activity" in 38 U.S.C. § 1112(c)(3)(B) to include service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual as a member of the Special Exposure Cohort pursuant to 42 U.S.C. § 7384*l*(14). The Energy Employees Occupational Illness Compensation Program Act of 2000 authorizes compensation and benefits for certain Department of Energy (DOE) employees

and DOE contractor or subcontractor employees who were employed at certain DOE facilities during certain time periods. Under that Act, if a "member of the Special Exposure Cohort" develops a "specified cancer" after beginning employment at one of these facilities, the cancer is presumed to have been sustained in the performance of duty and is compensable. Effective March 26, 2002, VA expanded the definition of "radiation-risk activity" in 38 C.F.R. § 3.309(d)(3)(ii) to include the same employment criteria as required pursuant to 42 U.S.C. § 7384*l*(14) to qualify as a "member of the Special Cohort." VA does not object to the statutory codifications in sections 1(a) and 1(b) of the bill.

Section 2(a) of H.R. 4172 would amend 38 U.S.C. § 1112(c) to provide that a radiation-exposed veteran who receives a RECA payment would be eligible for VA compensation for a disease presumed to be service connected under section 1112(c). Section 2(b) would amend 38 U.S.C. § 1112(c) to provide that a person who receives a RECA payment would be entitled to receive dependency and indemnity compensation (DIC). VA compensation and DIC would be offset by the amount received under RECA. VA favors enactment, provided that Congress can find an offset, of section 2 because it would enable veterans to receive ongoing compensation for the continued effects of their radiation-exposed disabilities. Section 2 would also be consistent with 38 U.S.C. § 1151(b), which provides for an offset of veterans benefits against potentially-duplicative awards pursuant to the Federal Tort Claims Act. However, we would also recommend amendment to section 6(e) of RECA, which currently provides that acceptance of a RECA payment "shall be in full satisfaction of all claims of or on behalf of that individual against the United States . . . that arise out of exposure to radiation, from atmospheric nuclear testing, in the affected area . . . at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4(a), exposure to radiation in a uranium mine, mill, . . . or exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device."

VA estimates that enactment of H.R. 4172 would not produce any benefit costs until Fiscal Year 2008. The projected 10-year cost of this measure is approximately $29.6 million.

H. R. 4173

Mr. Chairman, H.R. 4173 would require VA to enter into a contract with an organizational entity described therein that would study and prepare a report on employment placement, retention, and advancement of recently-separated servicemembers. The organization would analyze employment-related data to determine whether the employment obtained by recently-separated veterans is commensurate with their training, whether these veterans received educational assistance or training under the MGIB or VA's Vocational Rehabilitation and Employment programs, and whether transition assistance services helped the veterans in obtaining civilian employment. It would also analyze trends in the hiring of veterans in the private sector and identify recently-separated veterans that have reached senior level management positions. The contract would require that the contractor submit the study to VA not later than 2 years after the date on which the contract was made. The contract would not exceed $490,000 and would be funded through the VA's compensation and pension appropriations.

VA supports the goals of H.R. 4173. We believe such a study should be done in consultation with the Department of Labor (DOL) and should not be duplicative of DOL requirements to study modifications to certain employment reforms. We note, however, that VA has under consideration long-term plans for a broad-based study of the full panoply of veterans' transition benefits, including but not limited to employment. VA believes it may be advantageous to broaden a study contract beyond what is contemplated in the bill. VA also believes it would be more appropriate to fund this study out of the Readjustment Benefits account – which provides funding for educational training and vocational rehabilitation.

While the funding limit in H.R. 4173 is sufficient for the work contemplated in the bill, additional funding may be needed in the future for further studies.

We further note that the "Qualified Entity" provision may be too narrowly tailored to provide fair competition. In addition, the bill purports to study "recently separated servicemembers," defining "recently separated" as within the previous 16 years. We believe this timeframe is too long, since there have been many significant enhancements to employment programs for separating servicemembers over the past sixteen years. Within that timeframe, Congress put into place the successful transition assistance program, which was further enhanced based on the findings of the "Principi Commission." Continued improvements to these programs are an ongoing process. Because of these enhancements, the results of this study would not represent the changes brought about by these more recent programs. The study would be more significant if it was limited to measuring the impact of current programs and services. Further, because the nature of military service has changed dramatically over the past three years, an evaluation of sixteen-year-old data could erode the otherwise beneficial results of such a study.

DRAFT BILL – "VETERANS EDUCATION OPPORTUNITY ACT OF 2004"

Mr. Chairman, you also requested our views on a draft bill entitled the "Veterans Education Opportunity Act of 2004." This proposal would authorize certain individuals eligible to participate in the chapter 32 Veterans' Education Assistance Program (VEAP) to transfer to the Montgomery GI Bill (MGIB) program during the one-year period beginning on the date of enactment of this proposal. This section would require these individuals to have served on active duty without a break in service since June 30, 1985, through at least April 1, 2004; to have completed the requirements of a secondary school diploma (or its equivalent) or the equivalent of 12 semester hours in a program of education leading to a standard college degree; to have been discharged or released, if a

veteran, with an honorable discharge; and not to have made an election to enroll in VEAP under section 3018C of title 38 (the previous "open window" authority). Finally, the new section would require these otherwise qualified individuals, in addition, to pay $3,900 to become eligible for this entitlement. The election to enroll in the MGIB (and disenroll from VEAP where applicable) would be irrevocable.

By way of background, post-Vietnam servicemembers were eligible to enroll in VEAP after December 31, 1976, and before July 1, 1985. Under that program, active duty servicemembers made voluntary contributions to an individual account which the Government matched at a 2:1 ratio. In October 1996, Public Law 104-275 allowed VEAP participants a one-year "window" in which to transfer to the MGIB, where they would be afforded a greater education benefit. Again, in November 2000, Public Law 106-419 afforded individuals who either had turned down a previous opportunity to convert to the MGIB or had a zero balance in their VEAP account the option to convert to the MGIB program. Both of these election opportunities have expired. The proposed draft bill would provide another, similar opportunity for qualified individuals to transfer to the MGIB.

This bill also allows individuals who entered on active duty during the VEAP era who are not eligible for MGIB education benefits because they did not qualify for a previous election or they failed to act on a previous election opportunity to enroll in MGIB. Neither previous open window allowed servicepersons who were not enrolled in VEAP to convert to MGIB. Enactment of this bill would result in significantly increased costs, as described below, that are not contemplated in the President's budget. Therefore, we are unable to support this bill's enactment.

VA estimates that, if enacted, this proposal would cost $17.2 million for FY 2005, $50.3 million for the five-year period from FY 2005 through 2009, and $402.3 million over the ten-year period from FY 2005 through 2014.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the Subcommittee may have.

STATEMENT BY
MR. WILLIAM J. CARR
ACTING DEPUTY UNDERSECRETARY OF DEFENSE
(MILITARY PERSONNEL POLICY)

BEFORE THE SUBCOMMITTEE ON EDUCATION BENEFITS
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

Good morning Mr. Chairman and members of the Subcommittee. I am pleased to appear before you today to discuss a cornerstone of our military recruiting efforts, the Montgomery GI Bill (MGIB). There is little doubt that the MGIB has met or even exceeded the expectations of its sponsors and has been a major contributor to the success of the All-Volunteer Force.

The original "GI Bill of Rights," created at the end of World War II, gave returning Servicemembers a comprehensive package of benefits to compensate for opportunities lost while in the military, and to ease their transition back into civilian life. We will soon be celebrating the 60th Anniversary of the GI Bill, described by noted economist, Peter Drucker, as perhaps "the most important event of the 20th century." Perhaps the most far-reaching provision of the GI Bill was the financial assistance it made available for veterans to attend college.

That original GI Bill offered returning Soldiers, Sailors, Airmen and Marines payment of tuition, fees, books, and supplies, along with a living stipend, at the educational institution of the veteran's choice. The list of notable Americans who received their higher education through this program reads like a "Who's-Who" of prominent businessmen, scholars, and politicians.

Today's MGIB traces its lineage directly to this milestone program, with one important change. While all earlier GI Bill programs were designed to ease the transition to civilian life from a conscripted military force, since 1973, we have defended this nation with volunteers. Thus, the MGIB has as one of its purposes, *"to promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces."*

For today's hearing, you asked me to comment on a draft bill that would expand MGIB eligibility to current Service members who entered the armed forces between 1976 and 1985, after the termination of the Viet Nam era GI Bill and before the introduction of the MGIB. The education benefit for military service during that period was the Veterans Education Assistance Program (VEAP), a program with benefit levels significantly less than those of today's MGIB.

Since the basic MGIB benefit, along with the remainder of veterans' programs and benefits, falls under the Department of Veterans' Affairs for overall policy and funding, the fiscal impact of this proposal would fall mainly on that Department. Before I comment on that bill, I want to share with you the current state of military recruiting and retention.

RECRUITING AND RETENTION

The Montgomery GI Bill continues to be an extremely popular recruiting incentive. Over 96 percent of all new active duty accessions enroll in this program which provides over $35,000 in benefits to a recruit in return for just a $1,200 reduction from current pay. An additional option allows an active duty service member to contribute another $600 in return for $5,400 of potential benefits over a 36-month period. Three of the four services also offer a "College Fund" (also known as a "MGIB Kicker") as an enhancement to the basic MGIB benefit which is used to channel new recruits into critical or hard-to-fill occupations.

Young men and women continue to list "money for college" as one of the major reasons they enlist. The number of high school graduates who pursue post-secondary education continues to be very high. These high school graduates find college financial assistance available from many sources. However, while few of those sources match the level of benefits offered by the MGIB, these other sources of college funding do not require young men and women to delay their education for several years or risk their lives with duty in hostile conditions. The value of the MGIB benefit is one factor that contributes to our current recruiting success. I want to thank this committee for the well-timed increases in the MGIB benefit over the past three years. As a result of these increases, today's basic MGIB covers about 90 percent of the costs of a public four-year school.

Active duty recruiting has stabilized at about 185,000 new accessions each year DoD-Wide. All Services met or exceeded recruiting goals in Fiscal Year 2003 and are on track to do so again this year. Recruit quality, an important aspect of our manning strategy, is near an all-time high. High-quality recruits are a cost-effective investment and absolutely essential to the readiness of the Military Services. Research has shown that about 80 percent of high school graduates will complete their initial three-year obligation, while only half of the non-graduates will make it. High school diploma graduates also have fewer disciplinary problems. In addition, higher aptitude recruits learn faster and perform better on the job than their lower aptitude peers. Lower numbers of high school diploma graduates will require more accessions to replace higher attrition, consequently driving up recruiting costs. We believe that resources allocated to recruiting must be sufficient to keep military recruits above 90 percent high school diploma graduates and 60 percent above average in aptitude. We refer to these as recruit quality "benchmarks". The past four years have been among the best in recruiting history with recruit quality remaining significantly above these benchmarks.

In sum, the quality of enlisted accessions remains high. Incentive programs, such as the Montgomery GI Bill, remain essential to our success in attracting bright and well educated people, and allowing them to grow--both personally and professionally--through the educational attainment that the MGIB permits. As military members transition into civilian endeavors, this in-turn benefits the civilian labor pool – and the Nation

The strength of the All-Volunteer Force comes not only from the high quality of the recruits we access, but from the depth of experience that results from high retention rates. Numerical recruiting missions are, of course, strongly influenced by retention trends. A downturn in retention, for example, places additional pressure on recruiting. Retention results

for 2003 were strong and the positive trends continue in 2004. The Services also are on course to make end-year retention goals.

PROPOSED BILL -- VETERANS EDUCATION OPPORTUNITY ACT OF 2004

This draft bill would provide an open season to allow current Service members who entered active duty during the VEAP era, and who have continuously served since that date, until at least April 1, 2004, an opportunity to enroll in the MGIB. Although legislation in 1996 and 2000 offered MGIB eligibility to Service members who participated in VEAP , this draft proposal would open such eligibility to all remaining qualified VEAP-era Service members, regardless of whether or not they had participated in that program.

Since adoption of this proposal would affect the workload and resources of the Department of Veterans' Affairs, DoD defers to that agency for comment.

CONCLUSION

Today, the military stands ready, willing, and able to defend our nation, as well as its values and principles. Our young Servicemembers, all volunteers, are deployed all over the globe, many in harm's way. The MGIB education benefit has been a major contributor to recruiting achievements over the past 19 years. MGIB enrollment rates are high, at 96 percent of new recruits, and reflect the interest and effectiveness of the program as a recruiting tool. Additionally, the MGIB has been an invaluable asset to thousands of veterans, providing them with funding to enhance their education and thereby increase their employability and income-earning opportunities, while assisting their transition to civilian life. The Department of Defense is an "education" employer. We hire educated young people, invest in their education as they serve, and we encourage them to invest further in themselves when they leave. The MGIB is a program that helps to make all of that possible.

Few things, if any, are more important to the Secretary and to the Services than recruiting. We recognize our duty to man the All-Volunteer Force with high-quality, motivated, and well-trained young men and women. The MGIB remains a key to our success. As we move forward in the 21st Century, we must seize the opportunity to build on the remarkable legacy given to us by the visionaries who crafted each preceding version of the GI Bill. I thank this Subcommittee for its unflagging support of the men and women who serve, or who have served, in providing for the national defense.

Mr. Chairman, this concludes my statement. I thank you and the members of this Subcommittee for your outstanding and continuing support for the men and women of the Department of Defense and our nation's Veterans.

SERVING
WITH
PRIDE

Testimony

of

Richard "Rick" Jones
AMVETS National Legislative Director

before the

Committee on Veterans' Affairs
Subcommittee on Benefits
U.S. House of Representatives

on

Legislative Bills to Update, Improve and Enhance Earned Veterans Benefits and Related Matters

Thursday, April 29, 2004
10:30 AM, Room 334
Cannon House Office Building

A M V E T S

NATIONAL
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H.R. 843, the Injured Veterans Benefits Eligibility Act of 2003

H.R. 843, introduced by Rep. Silvestre Reyes, seeks to expand full service-connected disability benefits for individuals disabled by treatment or vocational rehabilitation provided by VA. Current law does not provide disability compensation to service members whose condition may be aggravated or initiated because of medical treatment or rehabilitation. While the benefit contract is generally related to a servicemembers past military experience, AMVETS does not oppose "service connected" coverage for individuals who are disabled as a result of their exposure to VA care.

H.R. 1735, a bill to increase the maximum amount of home loan guarantee for veterans

H.R. 1735, introduced by Rep. Susan Davis, would increase the maximum loan guarantee to $81,000 from $60,000. This change in guarantee will increase no-downpayment VA guaranteed home loan limits from $240,000 to $324,000. Under the current formula, VA guarantees 25 percent of the available loan up to the guarantee limit.

Housing prices in certain parts of the country prevent many veterans from buying a home without a downpayment. The proposed increase in the guarantee would enable many veterans to purchase a home of their choice without a downpayment, which would otherwise be unavailable to them. It is our understanding that related federal mortgage associations, including Fannie Mae, have established similar increases in their guarantee and that this legislation provides parity with the conventional loan market. AMVETS fully supports H.R.1735.

H.R. 2612, the Veterans Adapted Housing Expansion Act of 2003

H.R. 2612, introduced by Ranking Member Michael Michaud, would expand VA Secretary authority to provide specially adapted housing assistance to veterans with permanent and total service-connected disabilities. AMVETS supports the goal of this legislation.

H.R. 2206, the Prisoner of War/Missing in Action National Memorial Act

H.R. 2206, introduced by Rep. Ken Calvert, seeks to designate the memorial under construction at Riverside National Cemetery, Riverside, California, as the Prisoner of War/Missing in Action National Memorial. AMVETS supports this legislation as a fitting tribute and honor to America's former prisoners of war. It is our hope that such a designation would continue the work to ensure that future generations understand the courage of these men and women who sacrificed so much of their freedom in defense of the liberties we hold dear. AMVETS supports the bill.

H.R. 4065, the Veterans Housing Affordability Act of 2004

H.R. 4065, introduced by Rep Ginny Brown-Waite, seeks to adjust annually the amount of maximum home loan guarantee available to eligible veterans by indexing the increase of the VA guarantee to the Freddie Mac conforming loan limit. Housing prices in certain parts of the country prevent many veterans using a VA home loan guarantee from buying a home without a downpayment. The proposed increase in the guarantee would enable many veterans to purchase a home of their choice without a downpayment, which would otherwise be unavailable to them. Because the bill takes into account fluctuations in the housing market and would more readily adjust the housing benefit to the yearly real estate market, AMVETS supports this legislation.

H.R. _____, a draft bill, to codify a presumption of service connection for certain diseases when occurring in veterans exposed to ionizing radiation during military service

The draft bill introduced by Ranking Member Lane Evans would amend title 38 to presume additional diseases occurring in veterans exposed to ionizing radiation during service. This bill would allow presumption of service connection to eligible veterans with these conditions, including cancer of the bone, brain, colon, lung and/or ovary. AMVETS fully supports this section of the draft bill as it recognizes the serious adverse health consequences of these exposures during military service.

H.R. 3936, a bill to authorize the location of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area.

H.R. 3936 would allow the federal government to site the U.S. Court of Appeals for Veterans Claims within the D.C. metropolitan area instead of solely in the District of Columbia. AMVETS has no objection to passage of this legislation.

In closing Mr. Chairman, AMVETS looks forward to working with you and others in Congress to ensure the earned benefits of all of America's veterans are strengthened and improved. As we find ourselves in times that threaten our very freedom, our nation must never forget those who ensure our freedom endures. AMVETS thanks the panel for the opportunity to address these issues.

SERVING
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April 29, 2004

The Honorable Henry E. Brown, Jr., Chairman
House Veterans' Affairs Committee
Subcommittee on Benefits
Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Brown:

Neither AMVETS nor I have received any federal grants or contracts, during this year or in the last two years, from any agency or program relevant to the April 29, 2004, hearing on issue before the Subcommittee

Sincerely,

Richard Jones
National Legislative Director

AMVETS

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STATEMENT OF CARL BLAKE,

ASSOCIATE LEGISLATIVE DIRECTOR,

PARALYZED VETERANS OF AMERICA

BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE ON BENEFITS

CONCERNING

H.R. 348, THE "PRISONER OF WAR BENEFITS ACT OF 2003;"

H.R. 843, THE "INJURED VETERANS BENEFITS ELIGIBILITY ACT OF 2003;"

H.R. 1735;

H.R. 2206, THE "PRISONER OF WAR/MISSING IN ACTION

NATIONAL MEMORIAL ACT;"

H.R. 2612, THE "VETERANS ADAPTED HOUSING EXPANSION ACT OF 2003;"

H.R. 4065, THE "VETERANS HOUSING AFFORDABILITY ACT OF 2004;"

H.R. 3936;

AND PROPOSED DRAFT LEGISLATION

APRIL 29, 2004

Chairman Brown, Ranking Member Michaud, members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to testify today on proposed legislation. As we continue to bring home new veterans and disabled veterans, it is imperative that we continue to improve the benefits that will be available to these men and women.

H.R. 348, THE "PRISONER OF WAR BENEFITS ACT OF 2003"

H.R. 348, the "Prisoner of War Benefits Act," would ease the difficulty associated with receiving a service-connection for diseases occurring as a result of being a prisoner of war (POW). It would also add several diseases to the list of presumptive conditions and would eliminate the minimum internment requirement for a POW to qualify for dental care.

PVA believes the section of this legislation that would repeal the 90 day internment period for a POW to be eligible for dental care is unnecessary. This statutory change was already included in P.L. 108-170, which was signed into law during the last session of this Congress.

This legislation would repeal the requirement that a POW be held captive for at least 30 days in order to receive a presumption of service-connection for the purposes of receiving benefits. This issue came to the forefront last year when American service personnel were held captive by Iraq for less than 30 days. However, they had sustained severe injuries as a result of combat actions and their subsequent internment. It seems only fair that any POW, regardless of time in captivity, be recognized as being eligible for service-connected benefits. PVA supports this provision.

We likewise support the addition of the following diseases to the list of diseases presumed to be service-connected: heart disease, stroke, liver disease, Type II diabetes, and osteoporosis. We have no objections to the requirements placed on the Secretary of VA for adding or subtracting diseases to the presumptive service-connection list. We would only caution that veterans and former POWs should be given the benefit of the doubt before any consideration is given to removing a disease from the list.

H.R. 843, THE "INJURED VETERANS BENEFITS ELIGIBILITY ACT OF 2003"

H.R. 843, the "Injured Veterans Benefits Eligibility Act," would require the VA to provide full service-connected benefits for veterans who become disabled by treatment or

vocational rehabilitation or to the surviving spouses of veterans who die from VA health care treatment. PVA fully supports providing a veteran or his or her family benefits if they are disabled by VA treatment services. Although it is unpleasant to think that such problems occur during treatment, the reality is that sometimes veterans are harmed by mistakes made during their medical treatment. It is only fair and just that these veterans receive all of the benefits available to other service-connected veterans, to include those men and women negatively affected by treatment received at a Department of Defense (DOD) medical facility.

H.R. 1735

H.R. 1735 would increase the home loan limit available from the VA. This would allow our servicemen and women who are returning from the conflicts in Iraq and Afghanistan and getting out of the military to have a fair opportunity to own a home. Too often, these men and women do not have a chance to obtain a home because of high real estate costs associated with the still booming housing market. This legislation would place them on equal footing with private citizens seeking a new home. In a letter we recently sent to Representative Susan Davis (D-CA), who introduced the legislation, we expressed our support for this proposal. This legislation is in accordance with the proposal made by *The Independent Budget* to increase the maximum VA home loan guaranty amount.

H.R. 2206, THE "PRISONER OF WAR/MISSING IN ACTION NATIONAL MEMORIAL ACT"

H.R. 2206, the "Prisoner of War/Missing in Action National Memorial Act," calls for the designation of a POW/MIA memorial located at the Riverside National Cemetery in Riverside, California. PVA has no objections to the proposed memorial. A memorial recognizing the extreme sacrifices and struggles of those held prisoner and those who have never returned home is more than a fitting tribute. As we have recommended in the past with respect to the authorization of national memorials, we urge the designers of this memorial to make every effort to ensure full accessibility for disabled veterans and citizens in the memorial design.

H.R. 2612, THE "VETERANS ADAPTED HOUSING EXPANSION ACT OF 2003"

H.R. 2612, the "Veterans Adapted Housing Expansion Act," authorizes the VA to provide the Specially Adapted Housing (SAH) grant to veterans with a total and permanent service-connected disability due to the loss, or loss of use of both upper extremities such as to preclude use of the arms at and above the elbows. PVA interprets this legislation to mean that a qualifying veteran no longer has use of not only his or her lower arms, but specifically the elbow joint as well. Veterans who have loss of both upper extremities face not only obvious everyday challenges, such as brushing teeth and tying shoes, but also less obvious mobility impairments associated with balance.

PVA believes that it is only fair to allow these severely disabled veterans to have access to the SAH grant. Currently, these veterans can only receive adaptive assistance under Section 2101(b) of Title 38 U.S.C. The grant governed by this section is significantly less than the SAH grant. The proposed legislation would place these veterans under Section 2101(a) which authorizes the Secretary of VA to provide the SAH grant to veterans seeking an accessible home or residence.

PVA supports H.R. 2612. We must, however, underline the importance of ensuring that the intent of this Subcommittee be made clear—to guarantee that the broadest number of veterans be covered by this legislation.

H.R. 4065, THE "VETERANS HOUSING AFFORDABILITY ACT OF 2004"

The "Veterans Housing Affordability Act" is similar in concept to H.R. 1735. As we previously stated, it is most important to allow our servicemen and women who are returning from the conflicts in Iraq and Afghanistan and getting out of the military to have a fair opportunity to own a home. PVA supports either measure which accomplishes this objective. We must make every effort to ensure that our servicemen and women can realize the dream of owning a home.

PVA, in accordance with the recommendations of *The Independent Budget* for FY 2005, also agrees with the provision of this legislation that would allow the home loan guaranty amount to have an automatic annual adjustment. Much like many other benefit programs administered by the VA, the home loan guaranty has not been adequately adjusted to reflect the economic growth of this country. PVA supports this legislation.

H.R. 3936

PVA supports H.R. 3936 which would authorize the United States Court of Appeals for Veterans Claims (CAVC) to be located anywhere in the Washington, D.C. metropolitan area. PVA is also please to see that Congress recognizes the need to have a dedicated Veterans Courthouse and Justice Center. *The Independent Budget* states:

> It [CAVC] is the only Article I court that does not have its own courthouse. This court should be accorded at least the same degree of respect enjoyed by other appellate courts of the United States. . .The court should have its own home located in a dignified setting with distinctive architecture that communicates its judicial authority and stature as a judicial institution of the United States.

PVA approves of the provision that would allow the court to be located in the Washington, D.C. metropolitan area and not just in the District of Columbia proper. In letters sent to the Secretary of Defense Donald Rumsfield and the Vice President of the United States last fall, we point out that a suitable location has been identified near the Pentagon on which the new "United States Veterans Courthouse and Justice Center" could be constructed.

PVA also believes that it is important to allow the individuals who regularly practice before the court to reside there as well. This would include representatives from the Veterans Consortium Pro Bono Program, the National Veterans Legal Services Program, and appellate attorneys from veterans service organizations. PVA, along with many other veterans service organizations, maintain a strong presence before the CAVC and it is important that they be allowed to continue to have easy and unrestricted access to the Court.

THE "VETERANS EDUCATION OPPORTUNITY ACT OF 2004"

Under current law, servicemembers who first entered military service before June 30, 1985, and continue to serve, are ineligible for Montgomery GI Bill (MGIB) benefits. An active duty servicemember who entered the military on or before that date cannot participate in the MGIB unless he or she was enrolled in the education assistance program that was available prior to June 30, 1985, and chose to convert to the MGIB. *The Independent Budget* states:

"Any person who was serving in the Armed Forces on June 30, 1985, or any person who reentered service in the Armed Forces on or after that date, if otherwise eligible, should be allowed to participate in the Montgomery GI Bill under the same conditions as members who first entered military service after that date."

The proposed legislation would remove the restriction on eligibility for the MGIB for military personnel who entered the service prior to June 30, 1985. In accordance with the recommendation of *The Independent Budget*, PVA supports this proposed legislation.

EMPLOYMENT PLACEMENT, RETENTION, AND ADVANCEMENT

PVA supports the proposed legislation that directs the Secretary of VA to contract for a report on employment placement, retention, and advancement of recently separated servicemembers. PVA has worked with many of the veterans service organizations to ensure that veterans preference rights in federal hiring are protected. We remain concerned that the federal government is not doing enough to recruit new veterans to the workforce. We are concerned that veterans often are hired for jobs that are not commensurate with the skills they have.

The success of veterans seeking employment in the private sector is much less clear. Despite the reassurances of various business executives who recently testified before the full Committee that they were hiring veterans, we have not seen hard facts on the number of men and women leaving the military and entering the workforce. This report would hopefully provide a better reflection of the hiring trends of businesses in this country. As new veterans return home from the war in Iraq and Afghanistan, it is important that they

have the opportunity to gain employment when leaving the service.

PRESUMPTION OF SERVICE-CONNECTION FOR EXPOSURE TO IONIZING RADIATION

The proposed legislation would add certain additional diseases to the list of diseases presumed to be service-connected for veterans exposed to ionizing radiation. The diseases added to the presumptive list include: bone cancer, brain cancer, colon cancer, lung cancer, and ovarian cancer. PVA supports this section of the bill.

Currently, radiation-exposed veterans who have received a payment under the Radiation Exposure Compensation Act (RECA) are barred from receipt of VA compensation by 38 C.F.R. § 3.715. PVA also understands that the VA has taken interpretation of this regulation one step further. If a veteran currently receiving VA compensation is granted a RECA payment, the VA stops payment of compensation to that veteran. Likewise, spouses who have received similar payments from the RECA must forfeit DIC. PVA does not believe that was the original intent of the RECA. Section 2 of the proposed legislation would prohibit the VA from denying compensation to veterans exposed to radiation just because they received a payment under RECA. The bill would restore the original intent of the compensation program so that payments from VA or RECA would be offset against the other. This would prevent dual payment for the same disability. PVA supports this section of the legislation.

It is vitally important that we continue to improve the benefits that the men and women who are currently serving will soon be taking advantage of. I would be happy to answer any questions that you might have. PVA would like to thank you for holding this hearing and I would be happy to answer any questions that you might have.

Information Required by Rule XI 2(g)(4) of the House of Representatives

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2004

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,000 (estimated).

Fiscal Year 2003

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,803.

Fiscal Year 2002

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program— $228,413.

VETERANS OF FOREIGN WARS

OF THE UNITED STATES

STATEMENT OF

JOHN MCNEILL, DEPUTY DIRECTOR
NATIONAL VETERANS SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

VARIOUS VETERANS' BENEFITS LEGISLATION

WASHINGTON, D.C. APRIL 29, 2004

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to thank you for the opportunity to present our views on the following veterans' benefits legislation.

VFW supports ***H.R. 348, the Prisoners of War Benefits Act of 2003***, which would provide improved benefits for veterans who are former POWs. We especially applaud *Section 2(a),* which would repeal the 30-day minimum period of internment prior to presumption of service-connection for certain listed diseases for purposes of payment of veterans' disability compensation. By eliminating the 30-day minimum period so that eligibility starts from the moment of capture those POWs who have been held for shorter

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AREA CODE 202-543-2239 ● FAX 202-543-6719

intervals but have certainly suffered most of the same physical and psychological trauma as other POWs will be eligible for compensation.

We also support *Section 2(b)*, which would repeal the requirement for a minimum period of internment for presumption of service-connection for dental care and *Section 2(c)*, which would add heart disease, stroke, liver disease, Type 2 diabetes and osteoporosis to the list of diseases presumed to be service- connected under Sec.1112 of Title 38, U.S.C.

We thank the members of this Committee for taking the lead and passing legislation last session (P.L.-108-183) that included additional diseases such as psychosis, post-traumatic osteoarthritis and avitaminosis to the list of presumption of service-connection for former POWs.

VFW supports ***H.R. 843, the Injured Veterans Benefits Eligibility Act of 2003,*** which would provide full service-connected disability benefits to a veteran injured as a result of medical treatment or vocational rehabilitation provided by the Department of Veterans' Affairs (VA). Section 1151 of Title 38, U.S.C, provides that a qualifying additional disability, sustained as a result of VA medical treatment or vocational rehabilitation, is compensated in the same manner *as if* such disability were service-connected. It does not, however, provide the array of service-connected benefits that those who are deemed service-connected receive through VA such as specially adapted housing or automobile grants. This legislation would amend and clarify section 1151 so that those veterans disabled by any medical treatment or vocational rehabilitation would be able to receive the same benefits as those who are service-connected.

VFW is pleased with the two bills under consideration, H.R. 1735 and H.R. 4065 that would alter VA's home loan guaranty program. ***H.R. 1735*** would amend Title 38, U.S.C, to increase the maximum amount of home loan guaranty available to a veteran from $60,000 to $81,000. ***H.R. 4065, the Veterans Housing Affordability Act of 2004***, would amend Title 38, U.S.C, to increase the maximum amount of home loan guaranty available to a veteran, and would provide for annual adjustments to that amount.

As co-author of the *Independent Budget*, we have strongly advocated increasing this benefit as average housing costs have risen to amounts that make the maximum VA guaranty insufficient to allow veterans to use the VA home loan when purchasing a home. The current VA guaranty is capped at $60,000 with the general requirement that 25% of the loan be covered by the guaranty. So veterans purchasing homes with a VA guaranteed mortgage are limited to a home costing a maximum of $240,000. The median price of a home in a metropolitan area today is close to $500,000, which would render the VA home loan useless in many housing markets today.

We especially applaud the provisions in H.R. 4065 that go a step beyond by increasing and allowing for the maximum amount of a VA home loan guarantee to be equal to 22.5 % of the Federal Home Loan Mortgage Corporation's (Freddie Mac) conforming mortgage loan rate. As Freddie Mac rates rise, so will VA guaranty rates, thereby eliminating the need for Congressional action.. We believe that this is a giant step forward in ensuring that this most important veterans' benefit keeps pace with the rising costs of today's housing market.

VFW supports ***H.R. 2206, the Prisoner of War/Missing in Action***

National Memorial Act, legislation which will designate a POW/MIA National Memorial at Riverside National Cemetery in Riverside, California. As a longtime advocate and leader in helping to locate the remains of members of our Armed Forces who are missing in action, we believe that a memorial to honor all former POWs and all those who remain unaccounted for is long overdue.

VFW's Department of California and many of the local VFW Posts in Southern California have been instrumental in helping to raise funds to build the memorial. It is only fitting and proper that a national memorial is dedicated to the bravery of those members who have sacrificed and served our national honorably -- some never to return home. We applaud your efforts to offer a memorial in their names.

VFW strongly supports ***H.R. 2612, "the Veterans Adaptive Housing Expansion Act of 2003***. This legislation would create a new entitlement for certain veterans who require specially adapted housing due to permanent and total service connected disabilities related to the loss of the arms at and below the elbows. It also requires the VA Secretary to provide assistance to veterans with permanent and total service-connected disabilities if the disability is due to blindness in both eyes with 5/200 visual acuity or less and loss or loss of use of both hands.

Current law only allows specially adaptive housing for those veterans with service-connected permanent and total disabilities due to the following:

- Loss or loss of use of both lower extremities
- Blindness in both eyes, having only light perception, combined with the loss or loss of use of a lower extremity
- Loss or loss of use of one lower extremity together with other disabilities which precludes locomotion without aid of braces, crutches, canes or wheelchair

With today's modern body armor, increasing numbers of our military are surviving deadly blasts, but returning from war with life-altering injuries. VFW feels that enacting this timely legislation would help these disabled veterans regain independence and improve their daily living. It is clearly the right and fair thing to do for those who have defended our country.

We are pleased to support the draft bill entitled the ***Veterans Education Opportunity Act of 2004***. This bill would fill a critical gap in the educational benefits of certain servicemembers.

This bill would allow those active duty members who enlisted before July 1, 1985 and who are eligible for education benefits under Title 38, Chapter 32, the opportunity to enroll in the Montgomery GI Bill Program (MGIB). The MGIB provides a significantly larger educational benefit than what they would be entitled to under the Veterans Educational Assistance Program (VEAP) and would be of great benefit for these servicemembers as they transition to civilian life.

The legislation would require these men and women to buy into the program for $3,900. Current servicemembers pay $1,200 for eligibility. While VFW strongly believes that these user fees should be eliminated entirely, the $3,900 is a great investment for those servicemembers; they would receive over $35,000 for their minimal investment. While these men and women have had prior opportunities to buy into the program, we are all aware that priorities change as the circumstances of life change. This is especially true as these men and women near their separation from the military.

We should do everything we can to support these men and women in uniform and to provide them the invaluable education that will allow them to assume their rightful place as leaders in the careers they choose.

VFW supports the draft bill which would direct the VA Secretary to contract for a report on employment placement, retention, and advancement of recently separated servicemembers.

Recently discharged men and women in the military have expressed increased concern about their ability to acquire and maintain gainful employment. Although many positive changes have been made to help our servicemembers successfully transition into civilian life, more should and can be done to ensure that they are given the skills, training and education they need to enable them to become leaders of the future.

We believe that this report will highlight areas in the Transition Assistance Program (TAP) and VA's Vocational Rehabilitation and Employment Program (VR&E), where improvement is needed such as access to government and private job listings and employment services, data on the number of veterans using the VR&E program and how effective and useful the TAP program is to separating servicemembers.

We also acknowledge the legislation's effort to collect data by tracking the servicemembers' employment history through the Department of Labor. All of these things will help to provide a seamless transition for our servicemembers that is timely, effective and efficient.

VFW is pleased to lend its support to the draft bill that would add additional diseases for a presumption of service-connection when occurring in veterans exposed to ionizing radiation during active military service.

Despite scientific evidence that has recognized exposure to ionizing radiation and its long-term effects on internal and external organs, VA almost always denies veterans claims for service-connection. In 1984, Public Law 98-542 was enacted to provide compensation to certain veterans who incurred disabilities related to ionizing radiation exposure, but more legislation is needed to create regulatory consistency in determining service-connection for these radiogenic diseases. We believe that amending Title 38, U.S.C. Section 1112 to include the additional diseases listed in this draft bill will go a long way towards ensuring that all of the radiogenic illnesses may soon be on the presumptive list for our Nation's veterans. We would also urge the subcommittee to include cancer of the central nervous system to the list of presumptive diseases.

VFW strongly supports ***H.R. 3936***, legislation that would authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia. It also would express the sense of Congress that a dedicated Veterans' Courthouse and Justice Center should be provided for that Court and that it should be located, if feasible, at a site owned by the United States that is a part of or proximate to the Pentagon Reservation.

Landmark legislation enacted in 1988 authorized a judicial review of veterans' claims decision and established a court to hear veterans' appeals. However, the Court does not have its own courthouse. It is presently situated in a commercial office building in downtown Washington D.C.

Land near the Pentagon Reservation (which is under control of the Department of Defense) has been identified as an available site for the United States Veterans' Courthouse and Justice Center. Given our Nation's special indebtedness to those who have served in our Armed Forces and the close relationship between veterans' programs and the mission of DOD, VFW believes that establishing a Veterans' Courthouse and Justice Center near the Pentagon would be a most appropriate and fitting use of government property.

Mr. Chairman and members of the Subcommittee, this concludes VFW's testimony. We again thank you for including us in today's important discussion, and I will be happy to respond to any questions you may have. Thank you.

STATEMENT OF
BRIAN E. LAWRENCE
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 29, 2004

Mr. Chairman and Members of the Subcommittee:

I am pleased to present the views of the Disabled American Veterans (DAV) on the ten bills under consideration today.

The DAV appreciates the Subcommittee's bipartisan efforts to improve benefits and expand opportunities for disabled veterans. The 1.2 million members of our organization are veterans who became disabled while serving our nation in the military. It is our duty as a grateful nation to ensure that those who have sacrificed so dearly in the name of freedom have the opportunity and support needed to maintain self-sufficiency.

H.R. 348
Prisoner of War Benefits Act of 2003

Congressman Michael Bilirakis introduced this bill to improve benefits for veterans who are former prisoners-of-war (POW).

H.R. 348 would eliminate the requirement for a minimum period of internment for eligibility for presumptive service connection, and for dental care. H.R. 348 would also expand the list of diseases determined to be presumptively service-connected.

Certain provisions of this bill were enacted last year. Public Law 108-103 eliminated the 30-day requirement for POWs to qualify for presumptions of service-connection for certain psychosis, anxiety states, dysthymia disorder, organic residuals of frostbite, and post-traumatic osteoarthritis. Public Law 108-170 eliminated the 90-day requirement for former POWs to qualify for dental care.

H.R. 348 would end the minimum period of internment requirement altogether and provide eligibility for presumptive service connection, regardless of the amount of time a POW was held in captivity. H.R. 348 would also add heart disease, stroke, liver disease, type II diabetes, and osteoporosis to the list of diseases determined to be presumptively service connected.

In accordance with resolutions adopted by the delegates to the DAV National Convention, the DAV supports legislation to expand the list of POW presumptions, and to eliminate the minimum internment requirement for presumptive service-connection. As the Subcommittee is aware, military personnel captured in war are often subject to brutal psychological and physical treatment, inadequate nutrition, and lack of medical care. Such deprivations and abuse often lead to unforeseen maladies that may manifest several years after release from captivity. Studies indicate a likelihood that former prisoners will eventually contract a disease listed under the provisions of title 38, United States Code, section 1112(b) at some point in their lifetime. We urge that the proposals contained in the Prisoner of War Benefits Act of 2003 be favorably acted upon by the Subcommittee.

H.R. 843
Injured Veterans Benefits Eligibility Act of 2003

Congressman Silvestre Reyes, along with Ranking Member Lane Evans, Representatives Corrine Brown, Bob Filner, and Neil Abercrombie as original cosponsors, introduced this bill to provide full service-connected disability benefits to veterans injured as a result of medical treatment or vocational rehabilitation provided by the Department of Veterans Affairs (VA).

Title 38, United States Code, section 1151 provides that a disability, sustained as a result of VA medical treatment or vocational rehabilitation, shall be compensated ***as if*** such disability were service-connected.

According to VA General Counsel opinions, the words "***as if***" distinguish disabilities caused by VA medical treatment or vocational rehabilitation from disabilities incurred during active military service. The VA contends that full service connection is not warranted for disabilities caused by VA medical treatment or vocational rehabilitation. As such, the VA provides basic compensation to veterans disabled as a result of the aforementioned VA programs, but refuses to provide ancillary benefits normally associated with full service connection. Ancillary benefits are benefits paid in addition to basic compensation, such as a grant for a specially adapted home or automobile.

H.R. 843 would amend section 1151 to make clear that a disability sustained as a result of medical treatment or vocational rehabilitation, shall be considered fully service connected.

The DAV fully supports The Injured Veterans Benefits Eligibility Act of 2003. The VA's denial of ancillary benefits is contrary to law, and clarification is necessary. Although VA maintains that the phrase "as if" does not confer status equal to service connection for purposes of all benefits, we note VA's interpretation contradicts other statutory provisions. We believe the phrase "as if" means exactly what it says and confers service-connected status. Veterans are paid compensation under section 1151. Section 101(13) of title 38, United States Code, defines "compensation" as a monthly payment made by the Secretary to a veteran because of a service-connected disability. . . ." and, Section 1114 of title 38, United States Code, provides rates of compensation, and subsections (k) through (s) provide rates of compensation for anatomical loss and other severe impairments "as the result of service-connected disability." Under VA's convenient interpretation that § 1151 does not confer service connection, veterans could not receive the very compensation § 1151 authorizes. We believe all benefits associated with service connection are due under existing law, and that the VA has misconstrued the meaning of the words "as if." In our view, a disabled veteran who is denied an essential benefit, such as a specially adapted housing grant, is not being treated as if service connected. We urge that the proposals contained in this bill be favorably acted upon by the Subcommittee.

H.R. 1735 and H.R. 4065

Congresswoman Susan A. Davis, along with Ranking Member Lane Evans, Representatives Corrine Brown, Silvestre Reyes, James P. McGovern and Mike Thompson as original cosponsors, introduced H.R. 1735 to increase the maximum amount of a home loan guaranty available to a veteran. H.R. 1735 would raise the maximum amount from $60,000 to $81,000.

Congresswoman Ginny Brown-Waite introduced H.R. 4065 to increase the maximum amount of a home loan guaranty available to a veteran, and to provide for annual adjustment to such amount.

The Servicemen's Readjustment Act of 1944 established the VA home loan guarantee program. Under this program, an eligible veteran may purchase a home through a private lender and the VA guarantees a portion of the loan. Congressional Research Service Reports show that since the program's inception, the VA has guaranteed approximately $708 billion in loans for the purchase or refinance of more than 16.6 million homes.

In addition to serving millions of veterans, the VA home loan guarantee program has provided a tremendous boost for our economy and the nation as a whole. Future prosperity will be bolstered if the program continues successfully. To remain successful, the amount of guarantee must keep pace with the rising cost of homes.

The Independent Budget (IB) for fiscal year 2005, which is a document co-authored by the DAV, the Veterans of Foreign Wars, Paralyzed Veterans of America, and AMVETS (American Veterans), recommended raising the home loan guaranty maximum amount. The IB

also recommended that Congress provide for an automatic annual indexing to 90 percent of the Fannie Mae-Freddie Mac loan ceiling thereafter.

We are pleased that the Subcommittee recognizes the need for a significant increase, along with an annual adjustment, to ensure the viability of the program. In accordance with the recommendation of the IB, the DAV supports H.R. 1735 and H.R.4065.

H.R. 2206
Prisoner of War/Missing in Action National Memorial Act

This bill would place a memorial in honor of POW/MIA veterans at Riverside National Cemetery in Riverside, California.

The DAV has no resolution concerning this issue; however, we would not oppose the enactment of this bill because it commemorates the extreme sacrifice POW/MIA veterans have made on behalf of our nation.

H.R. 2612
Veterans Adapted Housing Expansion Act of 2003

Congressman Michael H. Michaud, along with Ranking Member Lane Evans, introduced this bill to authorize specially adapted housing assistance to veterans with service-connected loss or loss of use of both upper extremities such as to preclude use of the arms at and below the elbows.

Veterans who are entitled to compensation for certain permanent and total service-connected disabilities are eligible for a grant to adapt their home with fixtures made necessary by the nature of their disabilities. The Specially Adapted Housing (SAH) program provides 50 percent of the cost of an adapted home. A maximum amount of $50,000 is available for such adaptations. Eligibility for SAH grants requires that veterans have permanent and total, service-connected disabilities due to:

- loss or loss of use of both lower extremities, such as to preclude locomotion without the aid of braces, canes, crutches, or a wheelchair;
- blindness in both eyes, plus loss or loss of use of one lower extremity;
- loss or loss of use of one lower extremity, together with:
    1. residuals of organic disease or injury, or
    2. loss or loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

H.R. 2612 would amend section 2101 of title 38, United States Code, to expand eligibility for specially adapted housing to veterans with "loss, or loss of use, of both upper extremities such as to preclude use of the arms at and below the elbows." Inasmuch as any veteran who has loss of use of an upper extremity at a level preventing elbow action will also necessarily have functional loss of the extremity below that level, and, just as any veteran who has anatomical loss of an upper extremity at or above the elbow will also necessarily have loss below the elbow, we believe this language should be revised for clarity. We suggest the wording of this provision be changed to reflect the language in section 1114(n) of title 38, United States Code.

The DAV supports H.R. 2612. We acknowledge and welcome the benefits this bill would provide to such catastrophically disabled veterans. Veterans who sacrificed so dearly in the name of freedom have earned any measure we can provide to make their lives as normal as possible.

H.R. 3936

Chairman Christopher H. Smith, along with, Ranking Member Lane Evans and Ike Skelton as original cosponsors, introduced this bill to authorize the principal office of the United States Court of Appeals for Veterans Claims (the "Court") to be at any location in the Washington, D.C. metropolitan area, rather than only in the District of Columbia. This bill also expresses the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for the Court and those it serves.

The DAV fully supports this bill. Though the Court has existed for more than fourteen years, it does not have a building of its own. Since its inception, the Court has been a tenant in commercial office spaces. Expediency was a priority during the establishment of the Court. Leasing property allowed for greater expediency, but it does not offer a long-term solution to the need for space.

The present and future needs of the Court, and those it serves, have increased since it was established. The Courtroom, chambers, and other spaces are inadequate to meet the growing number of claims. Rather than seeking additional or larger facilities to lease, legislation to authorize and fund the construction of a suitable and appropriate courthouse should be enacted.

Veterans and other persons claiming benefits from the VA have benefited substantially from the jurisprudence of the Court. It is in the interests of veterans and their dependents that the Court be accorded the same level of respect enjoyed by other appellate courts of the United States, yet, it is the only Article I court that does not have its own facility.

In accordance with the resolution adopted by the delegates to the DAV National Convention, and in accordance with the recommendation of the IB, the DAV supports legislation to authorize and fund the construction of a courthouse. We appreciate the Subcommittee's corresponding views on this important issue, and we urge the Subcommittee to act favorably upon this bill.

H.R. 4173

Congressman Michael H. Michaud, along with Chairman Christopher Smith, Ranking Member Lane Evans, and Henry E. Brown as cosponsors, introduced this bill to direct the VA to contract for a report on employment placement, retention, and advancement of recently separated service members.

The purpose of the report would be to determine whether:

- employment obtained by recently separated service members is commensurate with their level of training and education;
- recently separated service members received educational assistance or training and rehabilitation under programs administered by the VA;
- transition assistance services provided to recently separated service members was helpful in obtaining civilian employment;

The report would also seek to analyze trends in hiring of veterans by the private sector, and identify recently separated service members who have reached senior level management positions.

Feedback information is necessary to evaluate the success of any program, and information obtained in a study of VA transition and employment training could be used to guide future efforts to assist veterans. We acknowledge that such a study could be an asset to the VA; however, the DAV has no resolution regarding such a study; therefore, we have no position on this bill. The DAV appreciates the Subcommittee's efforts to improve employment opportunities for disabled veterans.

H. R. 4172

Ranking Member Lane Evans, along with Michael H. Michaud, introduced this bill to codify certain additional diseases as establishing a presumption of service connection when occurring in veterans exposed to ionizing radiation during active military, naval, or air service.

H.R.4172 would expand the list of presumptively service-connected diseases associated with radiation exposure to include the following cancers:

- bone;
- brain;
- colon;
- lung, and;
- ovary.

The DAV supports legislation to expand the list of radiogenic diseases eligible for presumptive service connection. As the Subcommittee is aware, military personnel exposed to ionizing radiation are likely to develop insidious diseases that manifest several years after exposure. We urge that the proposal to presumptively service connect the above listed cancers be favorably acted upon by the Subcommittee.

Section 2 of the bill would remedy an inequity in Public Law 101-426, the Radiation Exposure Compensation Act (RECA). Section 6(e) of Public Law 101-426 provides that any award under provisions of that Act satisfies all claims of, or on behalf of, that individual against the United States that arise out of the radiation exposure. Accordingly, no compensation or dependency and indemnity compensation (DIC) could subsequently be awarded on account of disability or death from such radiation-related conditions. However, later amendments to RECA added provisions to offset RECA awards by amounts previously awarded by VA. Thus, a VA award is offset against a subsequent award under RECA, but a RECA award bars any subsequent additional benefit. Section 2 of the bill would provide that awards under RECA would be offset against awards of compensation or DIC, rather than barring compensation or DIC altogether. In short, the resulting offset would be the same, regardless of whether a RECA award preceded or followed a VA award.

Draft Bill
Veterans Education Opportunity Act of 2004

This bill would provide Montgomery GI Bill (MGIB) benefits to service members who entered the military service prior to June 30, 1985, and continue to serve. Currently, active duty personnel who entered the military on or before June 30, 1985 cannot participate in the MGIB unless they convert entitlement to education benefits, which existed prior to June 30, 1985, to the MGIB.

The IB recommended that Congress should remove the restriction, on eligibility to the MGIB, to personnel serving in the Armed Forces who enlisted before June 30, 1985. In accordance with the recommendation of the IB, the DAV supports this proposed legislation.

Summary

On behalf of the 1.2 million members of the DAV, I thank you for the opportunity to present our views on these commendable bills. The Subcommittee's efforts to improve VA benefits illustrate to our nation's disabled veterans that their dedicated service and sacrifices are not forgotten. Clearly, the DAV's mission to improve the lives of disabled veterans is shared by the Subcommittee. We appreciate your efforts and look forward to working together on future issues.

STATEMENT OF
CATHLEEN WIBLEMO, DEPUTY DIRECTOR
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
HR 348, THE PRISONER OF WAR BENEFITS ACT OF 2003; HR 843, THE INJURED VETERANS BENEFITS ELIGIBILITY ACT OF 2003; HR 1735, TO AMEND TITLE 38 UNITED STATES CODE, TO INCREASE THE MAXIMUM AMOUNT OF A HOME LOAN GUARANTEE AVAILABLE TO A VETERAN; HR 4065, THE VETERANS HOUSING AFFORDABILITY ACT OF 2004; HR 2612, THE VETERANS ADAPTED HOUSING EXPANSION ACT OF 2003; THE VETERANS EDUCATIONAL OPPORTUNITY ACT OF 2004; AND OTHER PROPOSED BILLS

APRIL 29, 2004

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's view on the many issues being considered by the Subcommittee today. The American Legion commends the Subcommittee for holding a hearing to discuss these important and timely issues.

HR 348, " The Prisoner of War Benefits Act of 2003"

This bill would amend Title 38, United States Codes, to repeal the minimum period of time an individual must have been held or interned – not less than thirty days – for entitlement to the presumption of service connection for certain prisoner-of-war diseases, under Title 38, United States Code, Section 1112(b), and the presumption of service connection for dental care, under Title 38, United States Code, Section 1712(a)(1)(F). This bill would also expand the list of prisoner-of-war diseases presumed to be service connected currently set forth in Title 38, United States Code, Section 1112(b) to include: (16) heart disease, (17) stroke, (18) liver disease, (19) diabetes (type 2), and (20) osteoporosis. In addition, it would authorize the Secretary to issue regulations establishing presumptive service connection for any disease found to have a positive association with veterans' prisoner-of-war experience.

The issue of the welfare and well being of those veterans who have endured the hardship and trauma of being held as a prisoner-of-war has long been one of major concerns of The American Legion. To ensure that the government of the United States fulfills its obligation to these brave men and women, The American Legion has actively supported improvements in benefits provided to these individuals and their survivors and are pleased to support the proposed addition of these five diseases to the list of those currently presumed to be service connected. It is hoped this legislation will provide the impetus for action to further broaden the list of presumptive diseases and disabilities, which former prisoners-of-war are known to suffer from. Toward this end, we are encouraged that the bill recognizes and emphasizes the important role played by VA's Advisory Committee on Former Prisoners-of-War. This group of esteemed individuals, many of whom are themselves former prisoners-of-war, provide the necessary mechanism and forum to evaluate scientific and medical studies on former prisoners-of-war and make appropriate recommendations to the Secretary regarding needed changes in VA's outreach, benefits, and medical care program for this community of veterans.

However, based on the longstanding mandate of the members of The American Legion, we continue to advocate the inclusion of chronic pulmonary disease, where there was a history of forced labor in mines during internment and generalized osteoarthritis, as differentiated from the currently listed disability of "post-traumatic arthritis".

HR 843, "The Injured Veterans Benefits Eligibility Act of 2003"

This bill would amend Title 38, United States Code, Section 1151, to provide for full service-connected disability benefits and services to veterans disabled as a result of VA treatment or an approved program of vocational rehabilitation or training and death benefits for their survivors.

Currently, Title 38, United States Code, Section 1151, provides that VA disability compensation and Dependency and Indemnity Compensation (DIC) will be payable for a qualifying additional disability or death "as if" it were service-connected. Such qualifying disability or death must be found to have been caused by VA hospital care, medical or surgical treatment or examination, either by a VA employee or in a VA facility, and the proximate cause of the disability or death was carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the VA or the event was not reasonably foreseeable.

VA General Counsel held in a Precedent Opinion of July 3, 1997 that benefits paid under Section 1151 do not extend entitlement to benefits other than monetary compensation for the disability, such as specially adapted housing, automobile and adaptive equipment allowance, or education and medical care. It concluded that the statutes are unambiguous and that Congress intended to limit the entitlement under Section 1151 to disability compensation, clothing allowance, and paired organ compensation, rather than all veterans' monetary benefits and services.

The American Legion believes Section 1151 should be interpreted broadly, rather than narrowly as it relates to entitlement to additional benefits. The intent of the term "as if service-connected" connotes that the additional disability was incurred outside of military service and could not, therefore, be "service connected" under the traditional criteria of Title 38, United States Code, Section 1110. It also codifies the federal government's responsibility to provide compensation to the disabled individual or their survivors in the same manner and, we believe, to the same extent as other veterans who were disabled or died as a result of military service. Since this legislation would eliminate any question regarding Congressional intent as to the extent of entitlement to VA benefits authorized under Title 38, United States Code, Section 1151, The American Legion offers no objection to this bill.

H.R. 1735: "To amend Title 38, United States Code, to increase the maximum amount of a home loan guarantee available to a veteran."

This bill would amend Title 38, United States Code, to increase the maximum home loan guarantee from the current $60,000 to $81,000. For reasons discussed below, this would make the VA loan maximum available to veterans $324,000, a considerable improvement over the current $240,000.

H.R. 4065: "The Veterans Housing Affordability Act of 2004"

This bill would amend Title 38, United States Code, to increase the maximum amount of home loan guarantee, and to provide for annual adjustments for such amounts. H.R. 4065 would set the maximum guarantee at 22.5 percent of the current year Federal Home Loan Mortgage Corporation (Freddie Mac) single-family home loan purchase limit. Effective January 1, 2004, that limit is $333,700 so the VA guarantee would be $75,082, thus qualifying, again for reasons discussed below, an eligible veteran for a $300,328 mortgage. This bill has the added benefit of annual indexing of the maximum amount of home loan guarantee to the current year Freddie Mac loan purchase limit, eliminating the need for periodic legislative increases.

The American Legion has recognized for years that VA home loan guarantee limits have been inadequate and either of these bills would make home ownership a reality for more veterans than ever. Basic entitlement currently is $36,000 and up to $60,000 for certain loans over $144,000. Basic entitlement qualifies a veteran for a mortgage of $144,000; the current maximum would qualify a veteran for a $240,000 loan. Only homes in the Midwest, where the median price of a home is $141,000, easily qualify for VA basic guarantee, according to statistics from the National Association of REALTORS'® *Median Sales Price of Existing Single Family Homes for Metropolitan Areas* (© 2004, National Association of REALTORS). Lenders will generally lend up to 4 times of a veteran's available guarantee entitlement without requiring a down payment, provided income levels and credit qualify and the property appraises for the asking price. There is no "maximum" VA loan, but lenders currently limit VA loans to $240,000, a factor of 4 on the

guarantee amount, because lenders resell VA loans in the VA/FHA Government National Mortgage Association (Ginnie Mae) secondary market, which currently requires a 25 percent down payment or guarantee on loans.

The American Legion believes that higher limits should be established for VA home loans to stay current with increasing housing costs nationwide. For example, in San Francisco, California in the last quarter of 2003, the median price of a home was $574,300, an increase of 11.2 percent over 2002. For the same period, in Boston, Massachusetts the median price of a home was $406,000 up 5.3 percent; in the New York City Metro area, $353,000, up 10.2 percent; and here in Washington D.C. area the median home cost $292,100, a 12.9 percent increase over 2002. (*Id.*) In these cities, where half of the existing homes sales were for prices ABOVE the median, the difference between many veterans being able to secure financing for a decent home for his or her family and being shut out of the market is due to the currently inadequate levels of VA home loan guarantee. Either of these bills would benefit veterans in the D.C. market; H.R. 4065 would bring the VA guarantee just slightly above the median home price and H.R. 1735 would well exceed it. Not so in the other three high-priced markets as well as other areas in Southern California and Connecticut. It is noted that Freddie Mac single-family home loan purchase limits may be increased by up to 50% for home loans in Hawaii, Alaska, Guam and the U.S. Virgin Islands and it is presumed that these increases would also apply to H.R. 4065, were it enacted. Similar exceptions should be made for these few high cost metropolitan areas. If VA guarantee is to be used in lieu of down payments, The American Legion believes otherwise credit-worthy veterans should not be shut out of these markets because of inadequate VA home loan guarantee.

Either of these bills will achieve the objective stated by National Commander John A. Brieden, III in his testimony on September 16, 2003 to a joint session of the House and Senate Veterans' Affairs Committees that the VA Home Loan Guarantee of $240,000 should be raised to $300,000. The American Legion applauds the author and co-sponsors of H.R. 4065 for including a provision that will relieve the Congress of the administrative chore of periodically raising the guarantee limit while keeping VA current and competitive in mortgage markets.

HR 2612: "The Veterans Adapted Housing Expansion Act of 2003"

This bill would extend entitlement to special adapted housing assistance, under Title 38, United States Code, Section 2101(a)(2)(D), to those veterans whose service connected disabilities are rated permanent and totally disabling due to the anatomical loss or loss of use of both upper extremities such as to preclude the use of the arms at and below the elbows.

Clearly, veterans who have suffered the loss or loss of use of both upper extremities are very seriously disabled. Their type of severe disability is, for all practical purposes, in the same category as those disabilities currently enumerated in Title 38, United States Code, Section 2101. They obviously have a very difficult time performing normal day-to-day activities in and around their place of residence. The American Legion believes the type of assistance that would be made available under this legislation to those veterans so disabled will help improve their overall quality of life and we are pleased to support HR 2612.

HR 3936: "To amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area"

This bill would authorize the relocation of the United States Court of Appeals for Veterans Claims to a dedicated Veterans Court House and Justice Center to house the Court at a location in the greater Washington, DC metropolitan area, preferably in the area of the Pentagon. While The American Legion has no formal position on this matter, we would offer no objection to this legislation.

" The Veterans Educational Opportunity Act of 2004"

Aimed primarily at new military retirees, this legislation would allow the veteran who entered active duty on or before July 1, 1985 served honorably on continuous active duty through at least April, 1, 2004 and meets certain educational prerequisites to make an "irrevocable election" for entitlement to basic educational assistance under Chapter 30 of Title 38, United States Code, The All-Volunteer Force Educational Assistance Program (Montgomery G.I. Bill or MGIB). The

veteran must have been eligible to enroll in the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) and may not have made a previous in-service election to transfer eligibility from VEAP to MGIB. The veteran is required to make a $3900.00 contribution to MGIB within 24 months of the election, by direct payment to VA or by withholding from retired pay, and any past contributions to VEAP may be refunded to the veteran.

Election to convert eligibility to MGIB from VEAP is a good investment for the veteran. Under VEAP, the service member was required to contribute a minimum of $2700 that the Department of Defense would match on a $2 for $1 basis, plus "kickers". While the service member could contribute more, the basic contribution would give the veteran $300.00 per month for as long as the $11,700 fund lasted; about 39 months. Basic MGIB pays a benefit of $985 per month for 36 months if the veteran served at least three full years on continuous active duty for a total benefit of $35,460.

The American Legion is pleased to support this legislation.

"A bill to direct the Secretary of Veterans Affairs to contract for a report on employment placement, retention and advancement of recently separated veterans"

The report of this proposed two-year study of veterans released from service since 1990 would determine: whether the employment obtained by recently separated veterans is commensurate with training and education; whether recently separated veterans are receiving VA or DoD/Selected Reserve educational assistance, training or vocational rehabilitation; and whether transition assistance programs helped service members obtain civilian employment. The report would further analyze trends in hiring of veterans in the private sector and identify veterans who have reached senior level management positions. The study is to be funded from the Compensation and Pension account and may not exceed $490,000 in cost. The report results would be used to establish employment contact networks, for outreach to private sector employers and facilitate communication between recently discharged veterans and potential employers.

The American Legion lauds the intent of this bill, but questions the tasking of VA as the agency to contract for it. While The American Legion has no official position, it would seem that the Veterans Employment and Training Service (VETS) of the Department of Labor (DoL) would be a more appropriate agency to carry out this study. VETS is already responsible for a number of programs such as; the Uniformed Services Employment and Reemployment Rights Act, Job Counseling, Training, and Placement Service for Veterans, the Jobs for Veterans Act, Pub. L. 107-288 and a number of other programs. Further, The Bureau of Labor Statistics, cited in the scope of work as a primary source of data for the study, is also a DoL agency.

"A bill to codify certain additional diseases as establishing a presumption of service connection when occurring in veterans exposed to ionizing radiation during active military, naval or air service, and for other purposes.

This legislation proposes the amendment of Title 38, United States Code, Section 1112 to add to the list of presumed radiation-related diseases cancers of the bone, brain, colon, lung, and ovary. The purpose of this change is to eliminate the difference that currently exists between the list of qualifying radiation-related diseases under Title 38, United States Code, Section 1112, and the list of recognized radiation-related diseases applicable to the Department of Justice's "Radiation Compensation Act of 1990" (RECA) as amended, under Title 42, United States Code, Section 7384. In 2000, Pub. L. 106-398 expanded the number of diseases on the RECA list. However, similar legislation to update Title 38 was never developed. Since this difference may adversely affect some atomic veterans or their survivors seeking benefits from VA, legislative action is necessary to ensure these lists of qualifying diseases remain comparable, so that eligible individuals can make a decision which program may be most advantageous.

This legislation also proposes an amendment to the definition of radiation-risk activities for presumptive service connection, as set forth in Title 38, United States Code, Section 1112(c)(3) to include veterans whose military duties would otherwise qualified them for inclusion in the Special Exposure Cohort of the Energy Employees Occupational Illness Program, under title 42, United States Code, Section 7384. The definition of individuals to be included in Special Exposure Cohort and the applicable criteria is detailed and extensive.

The American Legion has long advocated the expansion of the definition of a radiation-risk activity in Title 38, United States Code, Section 1112. The current presumption is less than complete and clearly fails to recognize and include the thousands of veterans whose military duties were performed at various nuclear weapons development, testing, and manufacturing facilities, such as Hanford, Washington. While there, they were at risk of exposure not only to radiation, but also beryllium and silica. However, in claims for VA disability compensation or DIC, since the presumption of exposure does not apply, veterans are faced with the very severe legal hurdle of obtaining official government records to support their claim of exposure to radiation or other hazardous material, which may be difficult if not impossible. This proposed amendment would overcome the inequity that currently exists under Title 38 and make it easier for these atomic veterans or their survivors to obtain the benefits to which they are rightfully entitled.

While The American Legion fully supports the draft bill, we would like to recommend that consideration be given to amending it to specifically add to the list of diseases covered under Title 38, United States Code, Section 1112, chronic beryllium disease and chronic silicosis. These diseases are currently among those covered under RECA. This change is necessary to ensure the statute reflects all of the environmental hazards associated with veterans' participation in the nation's nuclear weapons program.

Finally, the draft bill provides that VA disability or DIC will be offset by the amount of any benefits received under RECA. This offset, however, does not otherwise affect their basic VA entitlement. Such offset provision is similar to that which applies to a settlement under Title 38, United States Code, Section 1151.

Mr. Chairman, thank you again for the opportunity to present the views of the 2.8 million members of The American Legion. We look forward to working with this Subcommittee to ensure that America's veterans receive the entitlements they have earned through their service to this great country.

Testimony by
F. PAUL DALLAS
National Commander
AMERICAN EX-PRISONERS OF WAR

Before the Subcommittee on Benefits
House Veterans Affairs Committee

April 29, 2004

Accompanied by

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Chairman Brown and Members of the Subcommittee on Benefits

Thank you for the opportunity to comment on behalf of the American Ex-Prisoners of War on legislation, H. R. 348, Prisoner of War Benefits Act of 2003 and H. R. 2206, the Prisoner of War/Missing in Action National Memorial Act.

There is an urgency - a great urgency - to take action on legislation affecting POWs. Most are WWII or Korean Conflict veterans and now dying at a rate greater than ten per day. Legislation delayed is legislation denied.

Long term damage to health of POWs has been exhaustively studied for more than 50 years by the National Academy of Sciences and other appropriate bodies. They have documented beyond any reasonable doubt that there are long term health consequences. Presumptives simply takes the burden off the individual POW of trying to prove the connection of his condition to the POW experience. They have made it possible to gain service connection for conditions shown by research to be causally related to the captive experience. H. R. 348 would add five such conditions.

Last July 10, 2003 Daniel L. Cooper, Under Secretary for Benefits, testified before the Senate Committee on Veterans Affairs. He stated that the extreme adversities common to the POW experience did have long term health consequences. He indicated that, on merit, VA could support those same presumptives under consideration by the Senate. He emphasized that VA is committed to properly compensating POWs for their long term health consequences.

H. R. 348 would add heart disease, stroke, liver disease to the presumptive list; also osteoporosis and adult onset diabetes. Osteoporosis results from the fact that under severe malnutrition, the human body takes calcium from the bones. To a large degree calcium lost cannot be replaced. A greater vulnerability to diabetes is also a consequence of the severe stress and extreme malnutrition common to the POW experience.

While the VA administratively - PL 108-183 - legislatively added "cirrhosis of the liver" to the presumptive list, the designation "chronic liver disease" more accurately reflects NAS findings.

We urge the Committee to add all the conditions specified in H. R. 348 to the presumptive list. They are unquestionably warranted by the evidence - and long overdue. It is likely the CBO overestimated the cost of this legislation by not considering the increasing mortality of current service connected POWs dying and taken off the compensation rolls as an off set against the cost. However even if there may be some additional cost, our Nation has an absolute obligation to these veterans who sacrificed health as well as freedom for their country. They have waited 50 years for their conditions to be made presumptive and should not be held hostage to the budget process!

Note: We call your attention to our testimony of March 25, 2003 before the Joint Hearings of the Senate and House Veterans Affairs Committees.

Thank you. We will now receive any questions you may have.

Remarks of
Mr. William Edwards
CEO
Mortgage Investors Corporation
Before the House Committee on Veterans Affairs
Subcommittee on Benefits
April 29, 2004
On H.R. 1735 and H.R. 4065

Mr. Chairman, Congressman Michaud and Members of the Subcommittee:

Thank you for the opportunity to testify before the Committee as industry experts. For more than 5 years, Mortgage Investors Corporation (MIC) has been the largest VA lender in the United States and is thus uniquely suited to comment on this legislation. Since 1994 MIC has processed over $19 billion in VA loans and in 2003 Mortgage Investors provided over $7.2 billion in mortgages to our nation's veterans.

Our business focuses on helping veterans save money by lowering their mortgage interest rates. Our average customer reduces their interest rate by approximately 25% and their monthly payment by $147 a month. To date, MIC has refinanced and reduced the interest of over 200,000 VA loans.

We believe that H.R. 1735 will allow thousands of additional veterans to enjoy one of the great benefits they earned by honorably serving this great nation. That is, of course, the opportunity to use the VA home loan guaranty program.

The other measure under consideration today is H.R. 4065. In this bill, we understand the term "maximum guaranty amount" would be equal to 22.5% of the Freddie Mac conforming loan limit limitation. However, we believe that 25% would be more beneficial to our nation's veterans and respectfully request that you, Mr. Chairman and this Subcommittee, consider this recommendation.

At this time, I would also like to take this opportunity to note the outstanding leadership of Mr. Keith Pedigo as Director of the VA Loan Guaranty Service. We have worked together through the years and believe that Mr. Pedigo and his staff are committed to providing the best possible

service for Veterans of this nation - as we are at Mortgage Investors Corporation. I would also like to commend the Veterans Administration's Loan Production Task Force for promoting loans to Veterans in excess of $240,000.

It is without reservation that Mortgage Investors Corporation supports H.R. 1735 and H.R. 4065.

Finally, MIC would like to thank Congresswoman Susan Davis and her 43 bipartisan cosponsors in supporting this important piece of legislation. Similarly, we want to thank Congresswoman Ginny Brown-Waite for sponsoring H.R. 4065. We urge that Congress swiftly pass both bills which are crucial to fulfilling our promise to assist our country's veterans.

STATEMENT FOR THE HEARING RECORD

of the

Mortgage Bankers Association

on

H.R. 4065 and H.R. 1735

before the

Subcommittee on Benefits

Committee on Veterans' Affairs

United States House of Representatives

April 29, 2004

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to express our views to the Subcommittee on Benefits on two bills, H.R. 1735, introduced by Representative Davis (D-CA) and H.R. 4065, introduced by Representative Brown-Waite (R-FL). MBA supports the changes proposed to the VA Home Loan Guaranty Program in both H.R. 1735 and H.R. 4065. MBA especially supports the indexing feature of H.R. 4065.

MBA is a strong advocate of the home financing program offered by VA's Loan Guaranty Service. Since 1949, this program has provided an important homeownership benefit to those men and women who have served their country through their service in the armed forces. The vast majority of VA guaranteed loans made each year are made by MBA members. Our members are proud of their involvement in this program.

H.R. 1735 would raise the maximum VA guarantee amount to $81,000, from the current maximum of $60,000. This would mean that the maximum no-downpayment loan a veteran could receive under H.R. 1735 would be $324,000, rather than the current limit of $240,000.

H.R. 4065 would index the maximum VA guarantee amount to 22.5% of the Freddie Mac loan limit. This change would allow the maximum no-downpayment loan a veteran can receive to be indexed to 90% of the Freddie Mac loan limit. Thus, if H.R. 4065 were in effect in 2004, the maximum VA no-downpayment loan limit would be $300,330.

Both H.R. 1735 and H.R. 4065 recognize the importance of raising the VA guarantee amount to keep pace with home price appreciation. H.R. 4065 takes the additional step of ensuring the VA guarantee amount would automatically rise in the future as home prices appreciate.

MBA supports the concept of indexing the maximum VA guarantee amount to the Freddie Mac limit because it will avoid the necessity of Congressional action to keep the VA benefit relevant as home prices change.

VA's guarantee amount has been raised only once since 1994, for an increase of approximately 18%, despite the fact that national home prices have appreciated over 70% since that time.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership prospects through increased affordability; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of approximately 2,700 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

The indexing feature is already a part of another important federal housing program, the Federal Housing Administration's (FHA) single-family loan programs. FHA received such indexing authority in 1996, and its maximum mortgage limits have nearly doubled since that time. Freddie Mac loan limits have increased over 64% since 1994. Clearly, it is time for veterans to be treated equally with other homebuyers with regard to financing.

MBA fears that the lack of indexing will preclude more and more veterans from using their benefit to obtain homeownership in many expensive markets as home price appreciation outstrips the VA maximum no-downpayment loan amount. For this reason, MBA strongly supports the indexing feature of H.R. 4065.

MBA understands that H.R. 4065 is expected to generate additional revenue for the U.S. government by an estimated $71.3 million over the next 10 years. The additional revenue provided by this change gives further evidence that H.R. 4065 is a prudent financial move for VA's Loan Guaranty Service. H.R. 4065 is, therefore, not only good for veterans, but it is good for the American taxpayer.

With respect to the two bills and the VA Loan Home Guaranty Program in general, MBA would make the following suggestions:

The VA guarantee amount should be raised to 25% of the Freddie Mac loan limits. This amount would equate to a VA no-downpayment loan amount equal to conforming loan limits. This course of action will afford veterans the same opportunity to buy their homes as conventional borrowers.

Additionally, MBA would suggest amending H.R. 4065 to include the provisions of H.R. 1735 raising the maximum VA guarantee limit to $81,000 or 25% of the Freddie Mac loan limit, whichever is higher. This change would provide an immediate and much needed increase to the maximum no-downpayment VA guarantee loan amount while at the same time ensuring its future relevancy through indexing.

Finally, MBA would suggest taking this opportunity to give the Loan Guaranty Service the authority to dissolve its panel of fee appraisers and implement a system whereby lenders can choose licensed appraisers. FHA undertook this reform more than 10 years ago and MBA believes it has led to increased efficiencies for the FHA program and lower costs for FHA borrowers. It is time for VA to have the same authority.

Giving such authority to VA's Loan Guaranty Service will allow the Service to review the lender-choice policy option and offer it to lenders as a way to increase the efficiency of originating VA guaranteed loans and lower the costs to veterans. Unfortunately, under current law, VA's Loan Guaranty Service is restricted from implementing such a change.

The current VA appraiser fee panel can be problematic for lenders and borrowers. Borrowers who submit a purchase offer on a home using VA guaranteed financing are often disadvantaged in the marketplace because of the perception that VA-guaranteed

financing takes longer to complete. While this perception is largely inaccurate, MBA does believe that a policy of lender-chosen appraisers will improve the VA Loan Guarantee program and ensure the veteran borrower is competitive with other bidders.

MBA respectfully urges the passage of H.R. 4065, as modified with elements of H.R. 1735 and changes to VA's appraiser authorities, for by doing so, you are bettering the homeownership prospects for those men and women of the armed services who have served our great country.

Thank you for giving MBA an opportunity to express our views on H.R. 1735 and H.R. 4065. We look forward to working with you on the passage of a bill that will raise and index the maximum VA guarantee amount and promote efficiency through lender selected appraisers.

Statement of the
NATIONAL ASSOCIATION OF REALTORS®
To the House Subcommittee on Benefits
on the VA Loan Guarantee Program
April 29, 2004

On behalf of the one million members of the NATIONAL ASSOCIATION OF REALTORS®, we are pleased to submit this written statement on the VA loan guarantee program. The NATIONAL ASSOCIATION OF REALTORS® represents a wide variety of real estate industry professionals including residential and commercial real estate development, mortgage banking, home building, property management, appraisals and syndication. The Association has a long tradition of support for innovative and effective affordable housing programs and we work diligently with the Congress to fashion housing policies that ensure Federal housing programs meet their mission and objectives responsibly and efficiently.

We commend the Subcommittee for their continuing efforts on behalf of American veterans. The NATIONAL ASSOCIATION OF REALTORS is a strong supporter of the Veterans Home Loan Guaranty program. The program, administered by the Department of Veterans Affairs, is a vital homeownership tool that provides veterans with a centralized, affordable, and accessible method of purchasing homes in return for their service to our nation.

NAR has consistently maintained that homeownership serves as a cornerstone of our democratic system of government and that homeownership continues to be a strong personal and social priority in the United States. Living in one's own home is central to the concept that a person has achieved a measure of security and success in life. Congress has long recognized that the VA home loan guarantee program is a valid and valuable tool for veteran homeownership and a suitable recognition of a veteran's service to our county.

NAR believes that the VA home loan program has a proven record for promoting homeownership amongst our nation's veterans. However, with the increasing costs of housing, we believe enhancements are needed to improve its usability among military personnel and veterans and position it as a viable homeownership vehicle for this thriving market and in this changing world.

NAR welcomes the opportunity to share our observations and viewpoints regarding the VA home loan program. These pertain to the following:

Reservists Eligibility
NAR thanks the Subcommittee for its diligent work on behalf of reservists. Last year Congress passed H.R. 2297 which included a provision granting reservists permanent eligibility under the VA home loan program. Especially in these times, our reservists are making great contributions to our nation's safety and security and we thank the Subcommittee for recognizing their efforts.

One-Time Use Restriction Proposal
The Administration's FY05 Budget includes a provision to limit the VA home loan guarantee program to a one-time use. Currently the loan guarantee is a lifetime benefit, with some conditions. Under the proposal the one-time use of the loan program would apply to any person who becomes a veteran after

the proposal becomes law. The provision would not apply to current eligible veterans for a period of five years. Eliminating subsequent use of the VA benefit under the program would affect a large number of veterans. In 2003, over 45,000 veterans bought a home with a subsequent use of their benefit. This represents over 30 percent of the VA program purchase loan activity last year. In addition, the Veteran's Administration estimates this change will cost the program $91 million dollars over 10 years. We strongly disagree with this proposal and ask the Subcommittee to communicate its opposition to the House VA/HUD Appropriations Subcommittee.

VA Loan Limits

We thank the Subcommittee for their past support to increase the VA Loan limits In 2001, Congress passed H.R. 1291, which raised the loan guarantee on mortgages backed by the VA nearly 20% to $60,000. This increase allowed veterans to borrow up to $240,000 towards the purchase of a home. However, since the passage of this legislation home prices have continued to escalate. Home prices in many areas of the country far exceed this limit, making the loan guarantee unusable for many veterans. For example, in 2003 the median home price across the state California was $305,000 (with much higher costs in specific cities); $353,000 for the NY/NJ/CT MSA; and $407,000 in Boston. The current limitation of $240,000 leaves veterans in these communities and others unserved. Our nation's veterans who need and qualify for the VA loan guarantee program should not be penalized because of their geographic location. We strongly support legislation to increase the VA loan guarantee amount in high cost areas. Both H.R. 1735 and H.R. 4065 provide for increases in the guarantee, and would make this important entitlement available to our nation's veterans, residing in high cost areas of the country.

Conclusion

We thank the Subcommittee for this opportunity to share our views regarding the VA loan guarantee program. This program, created under the GI bill, encourages private lenders to offer favorable home loan terms to qualified veterans. Since its establishment in 1944, the VA home loan guarantee program has helped millions of veterans purchase and maintain homes. The National Association of REALTORS® strongly supports this program, and it is our hope that the Subcommittees supports our recommendations enhancing and improving this tool for our nation's veterans.

Expanding Opportunities for Veterans
and All Paralyzed Americans

VETSFIRST

A DIVISION OF UNITED SPINAL ASSOCIATION

STATEMENT FOR THE RECORD

BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE

ON VETERANS' AFFAIRS

SUBCOMMITTEE ON BENEFITS

CONCERNING PENDING LEGISLATION

THURSDAY, APRIL 29, 2004

Submitted by:

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Introduction

VetsFirst, a division of United Spinal Association (formerly the Eastern Paralyzed Veterans Association), is a nationally certified veterans service organization that strives to ensure that veterans with spinal cord injury or disease have access to the supports and services they need and deserve. We applaud the House of Representatives Committee on Veterans' Affairs for holding this hearing and providing us the opportunity to comment on this pending legislation.

VetsFirst recognizes the importance of all the bills being discussed today – H.R. 348, the Prisoner of War Benefits Act of 2003; H.R. 843, the Injured Veterans Benefits Eligibility Act of 2003; H.R. 1735, which would increase the maximum amount of a home loan guarantee available to a veteran; H.R. 2206, Prisoner of War/Missing in Action National Memorial Act; H.R. 2612, the Veterans Adapted Housing Expansion Act of 2003; and H.R. 4065, Veterans Housing Affordability Act of 2004. However, given that our membership is comprised of veterans with disabilities, VetsFirst's testimony will be limited to the following two bills:

H.R.843, The Injured Veterans Benefits Eligibility Act of 2003

VetsFirst supports H.R. 843, the Injured Veterans Benefits Eligibility Act. This bill would extend full service-connected disability benefits to persons disabled by treatment or vocational rehabilitation provided by the Department of Veterans Affairs (VA) and for survivors of persons dying from such negligent treatment.

As it stands now, the law requires the VA to pay disability compensation to veterans injured while under the care of VA as if those injuries were incurred during military service. 38 USC § 1151, awards compensation and dependency and indemnity compensation (DIC) to any veteran who incurs a disability or death caused by the "carelessness, negligence, lack of proper skill, or error in judgment" in medical or surgical care administered within a VA medical facility. The law also awards the same compensation for disability or death caused during the training of vocational rehabilitation services, such as a "compensated work therapy program."

VetsFirst believes that a veteran who is disabled as a result of medical care administered by the VA must be entitled to *all* the same service-connected benefits as a veteran who is disabled during service, not just a monthly check from the VA. Awarding only disability compensation for an injury or death caused by VA negligence is insufficient and irresponsible.

When a veteran receives treatment at a VA facility, the Department of Veterans Affairs is responsible for the patient's care and well-being. Administering care that ultimately leaves a patient disabled is not only emotionally devastating to the patient, but will change every aspect of his or her life forever. At the very least, the VA must accommodate a veteran who becomes disabled, or worse, dies under the care of VA, with full service-connected disability benefits for that person or their survivors.

H.R. 2612, The Veterans Adapted Housing Expansion Act of 2003

VetsFirst supports H.R. 2612, the Veterans Adapted Housing Expansion Act. This bill would extend adapted housing assistance to individuals with upper-extremity disabilities in addition to the assistance already provided to veterans who are blind or have lower-extremity disabilities.

As a spinal cord injury veterans service organization, the vast majority of our service-connected members already qualify for adapted housing assistance – anyone who has a spinal cord injury that prevents use of their arms necessarily has loss of function in their legs as well. However, VetsFirst believes that *all* individuals who have sustained devastating injury while serving our country deserve equal treatment. Whether it is loss of sight, loss of leg function or loss of an arm should not matter.

The Wounded Warrior Project, a subsidiary of VetsFirst, routinely assists injured soldiers returning from Iraq and Afghanistan. Many of these young men and women have sustained severe injuries, including loss of limb or limb function. Although they have not yet been discharged into the VA system, they soon will be. These wounded warriors would be helped dramatically if this bill were to become law.

Conclusion

The men and women who have honorably served our country, including veterans with disabilities, deserve the benefits provided by the VA. VetsFirst supports H.R. 843, the Injured Veterans Benefits Eligibility Act and H.R. 2612, the Veterans Adapted Housing Expansion Act. These bills would provide full service-connected disability benefits for persons disabled by treatment or vocational rehabilitation provided by the VA and would extend adapted housing assistance to individuals with upper-extremity disabilities. This is the treatment our wounded heroes have earned.

VetsFirst applauds the committee for holding this hearing on pending legislation and its leadership on these and all issues important to the men and women who have served our country. We appreciate the opportunity to comment on this critical legislation.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

CHAIRMAN BROWN TO DEPARTMENT OF DEFENSE

Hearing Date: April 29, 2004
Committee: HVAC/Benefits
Witness: Mr. Carr
Question #1

Question: Does the Department have a position on H.R. 3936 to build and construct the veterans' courthouse on the Pentagon Reservation?

Answer: The Department supports HR 3936 to build a dedicated courthouse and justice center. However, the Department does not support the Pentagon Reservation as an appropriate location as it is a high security location and construction of the courthouse near the Pentagon would be a security risk for both the Pentagon and the courthouse. In addition, the Pentagon Reservation is not an ideal location because of the limited parking, traffic congestion, and extensive construction that is currently underway.

Response to QFR from Mr. Carr hearing from April 29th.

Q: **"Have you taken the time to look at recruiting guides, what effect that is having on a State like Maine, that has a higher percentage of National Guards overseas, what effect that is having on small businesses?"** In looking at the context of the question, it does not deal with recruiting but the impact of mobilization on small businesses in states such as Maine who have a high percentage of their reservists mobilized.

A: While there are currently no definitive statistical studies that address the effect of current mobilization/operations tempo on small businesses, both the Department of Defense and the SBA have initiatives underway to answer this question. The SBA estimates that as many as 420,000 Guard and reserve members work for small (less than 500 employees) businesses. The Department recognizes that small business ownership comes with many challenges, especially for those employing National Guard and Reserve members who are balancing civilian careers with service to the nation. The Counseling and Loan Programs, Servicemembers Civil Relief Act and Small Business Military Reservist Economic Injury Disaster Loans can offer some assistance, but more small business readiness planning is needed.

To gain further insight into issues of greatest concern to employers of Guard and Reserve members, the Office of the Assistant Secretary of Defense for Reserve Affairs is sponsoring research and studies project that focuses on determining the type and extent of problems with employer support and what causes those problems. One particular aspect of this research project will be to determine the effect on small businesses and the self-employed.

As a first step in determining the impact of mobilization, the Department recently established a Guard and Reserve Employer Database, which will facilitate direct communications with employers who actually employ Guard and Reserve members. This direct contact with employers affected by mobilization and reserve service will significantly enhance the Department's ability to address issues that concern employers and enhance employer support. .

Congressman Michaud to the Honorable Daniel L. Cooper, Under Secretary for Benefits, Department of Veterans Affairs

Questions for the Record
Honorable Michael H. Michaud
Subcommittee on Benefits
House Committee on Veterans' Affiars
April 29, 2004

Benefits Legislative Hearing

Question 1: With respect to the 2,491 persons currently receiving benefits under section 1151, please provide the following data:

(1) The number of veterans receiving compensation benefits;

(2) The total number of dependents for veterans receiving compensation;

(3) The number of veterans receiving compensation benefits paid at the 100% rate;

(4) The total number of dependents for veterans receiving compensation at the 100% level;

(5) The number of survivors receiving Dependency and Indemnity Compensation (DIC) benefits;

(6) The total number of dependents for survivors receiving DIC; and

(7) The age distribution of veterans receiving compensation.

Response: The figure of 2,491 cited in your question was reported incorrectly at the hearing as the total number of beneficiaries under Section 1151. It actually refers to the number of veterans receiving benefits, out of a total of 3,452 beneficiaries. Both figures were derived from the most recent data available in time for the hearing. In response to your inquiry, we performed a new and more thorough data run, and can now provide you with up-to-date statistics on Section 1151 benefit recipients.

VBA computer records currently identify 3,695 persons receiving compensation under Section 1151. Of this number, 2,713 are veterans and 982 are survivors. The following charts contain the other data that you requested.

(a) Veterans receiving compensation benefits under section 1151 by age and number of dependents

	Number of Dependents							
VETERAN AGE	None	One	Two	Three	Four	Five	Six	TOTAL
30-39	16	7	2	8	3	0	0	36
40-49	132	60	30	22	12	3	2	261
50-59	332	311	60	22	4	2	0	731
60-69	277	255	25	8	2	1	0	568
70-79	337	407	5	0	0	0	0	749
80-89	168	177	1	1	0	0	0	347
90-99	10	11	0	0	0	0	0	21
GRAND TOTAL	1272	1228	123	61	21	6	2	2713

(b) Number of dependents for veterans receiving compensation under section 1151 at the 100% rate

# Dependents	TOTAL
None	471
One	789
Two	80
Three	37
Four	11
Five	3
Six	1
GRAND TOTAL	1392

(c) Survivors receiving Dependency and Indemnity Compensation

# Dependents	TOTAL
None	956
One	19
Two	5
Three	2
GRAND TOTAL	982

Question 2: Has the Department of Veterans Affairs had any judgments or settlements under the FTCA where the award included a specific amount for educational expenses of the disabled veteran's spouse or child?

Response: We know of no judgments where the future educational expenses of a spouse or child of a disabled veteran, was a specific component of the award. Awards are made on the basis of State law and are evidentiary in nature. It is likely that a court would consider the value of contributions to education in its calculations of damages in cases involving a married, separated, or divorced

parent of children, where the disabled or deceased veteran was paying all or part of his children's college educational expenses.

In the context of Federal tort claim settlements, we have occasionally provided funds to help defray the expenses associated with the college educations of the children of deceased or disabled veterans. This occurs in structured settlements where, as part of a larger settlement, an annuity is purchased to provide annual payments to the children of claimants from their 18th to 21st birthday. These annual sums are generally not denominated as educational funds *per se* and are payable whether the child actually attends undergraduate or technical school. Nonetheless, payments are provided at a time in the child's life when the benefit would be expected to be used to defray educational expenses if the child chose to advance his/her education beyond high school. A portion of the stipulation providing for such payments in a recent administrative settlement is set forth as an example below. In the example, for each child, subparagraph (a) provides monthly support to age 21, subparagraph (b) provides for annual payments during college age years, and subparagraph (c) provides for a lump sum payment at the age of 25.

(1) For ABRIENNE MARIE
   (a) $350 per month for 4 years certain, payments to commence 1 month from the purchase of the annuity;
   (b) $5,000 per year for 4 years certain, payments to commence 1 year from the purchase of the annuity;
   (c) $13,641.72 paid 8 years from the purchase of the annuity;

(2) For SHASHA JUNE
   (a) $350 per month for 11 years certain, payments to commence 1 month from purchase of the annuity;
   (b) $5,000 per year for 4 years certain, payments to commence 8 years from the purchase of the annuity;
   (c) $22,364.35 paid 15 years from the purchase of the annuity;

(3) For MIKAELA KATHERINE
   (a) $350 per month for 12 years certain, payments to commence 1 month from the purchase of the annuity;
   (b) $5,000 per year for 4 years certain, payments to commence 9 years from the purchase of the annuity;
   (c) $23,913.21 paid 16 years from the purchase of the annuity;

(4) For GABRIELA ALEXIS
   (a) $350 per month for 15 years certain, payments to commence 1 month from the purchase of the annuity;
   (b) $5,000 per year for 4 years certain, payments to commence 12 years from the purchase of the annuity;
   (c) $29,465.10 paid 19 years from the purchase of the annuity;

(5) For JESSICA DOMINIQUE
   (a) $350 per month for 18 years certain, payments to commence 1 month from the purchase of the annuity;
   (b) $5,000 per year for 4 years certain, payments to commence 15 years from the purchase of the annuity;
   (c) $35,687.10 paid 22 years from the purchase of the annuity;

Question 3: Has the Department of Veterans Affairs had any judgments or settlements under the FTCA where the award included a specific amount for health care expenses, such as CHAMPVA for the member of the disabled veteran's family, such as a spouse or child?

Response: The eligibility for CHAMPVA is statutory in nature. To our knowledge, the providing of future health care for a spouse or child through VA or at VA expense has never been a component of a Federal Tort Claims Act (FTCA) judgment or settlement. To be entitled to VA or CHAMPVA care, eligibility would have to exist under title 38 of the United States Code independently from the FTCA. That is not to say that the cost of future medical care of dependents could not be considered in appropriate cases. Again, whether future medical care for a spouse or child is an appropriate element of damages in a medical malpractice claim is a matter of State law and an evidentiary matter. In most states, if the disability or death of a veteran results in the loss of medical insurance coverage to the veteran's dependants, the cost of replacing insurance may be considered in calculating an award in either a judgment or settlement.

Question 4: Please explain how the VA handles a FTCA offset when an FTCA award includes an amount specifically set aside for adapted housing.

Response: In *Kilpatrick v. Principi*, 327 F.3d 1375 (Fed. Cir. 2003), the United States Court of Appeals for the Federal Circuit held that the legislative history of 38 U.S.C. § 1151 showed Congress' intent to authorize specially adapted housing for veterans who have injuries that meet the criteria of 38 U.S.C. § 2101 and are awarded benefits pursuant to section 1151 for those injuries. We know of no specific instance of an offset against VA disability compensation of an FTCA award specifically set aside for specially adapted housing. *Kilpatrick* did not address the applicability of the section 1151 offset. Under section 1151, VA disability compensation is offset by the entire amount of the FTCA award. Thus, if an FTCA award includes an amount for special housing adaptations, the veteran may claim VA compensation but may not begin receiving it until the offset is complete. However, under current law and under the amendment to section 1151 proposed by H.R. 843, a veteran may receive the FTCA award and may also receive *Kilpatrick*-authorized specially adapted housing benefits, without offset against those benefits.

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